

Yu, Xiuling (2015) Transplanting law: control, resistance and co-operation. PhD Thesis. SOAS University of London.

<http://eprints.soas.ac.uk/22806/>

Copyright © and Moral Rights for this thesis are retained by the author and/or other copyright owners.

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the copyright holder/s.

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the copyright holders.

When referring to this thesis, full bibliographic details including the author, title, awarding institution and date of the thesis must be given e.g. AUTHOR (year of submission) "Full thesis title", name of the School or Department, PhD Thesis, pagination.

Transplanting Law: Control, Resistance and Co-operation

XIULING YU

Thesis submitted for the degree of PhD

2015

School of Law
SOAS, University of London

Declaration for SOAS PhD thesis

I have read and understood regulation 17.9 of the Regulations for students of the SOAS, University of London concerning plagiarism. I undertake that all the material presented for examination is my own work and has not been written for me, in whole or in part, by any other person. I also undertake that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged in the work which I present for examination.

Signed: Xiu Ling Yu

Date: 2nd September 2015

Abstract

Diseases pay no heed to boundaries. But laws and regulations are put in place to prevent their occurrence and spread. Public health law was among the most intrusive laws in Hong Kong's colonial history and affords us an important perspective for observing the often complicated interactions between the transplanted laws and local society. Despite its importance, to date no research has been published on this aspect of Hong Kong's public health laws.

In the present study, four dimensions of Hong Kong's public health system are highlighted, namely 'the body', 'plague', 'space' and 'medicine'. Examination of these aspects of public health is guided by the central question addressed in this dissertation namely, 'how did transplanted English public health laws interact with Chinese customs and traditions' in colonial Hong Kong? The four dimensions constitute the empirical core of the dissertation, which may be said to offer a public health law perspective on Hong Kong's socio-medical history. Based upon the four in-depth case studies, this study has two main findings. First, it argues that the colonists' imagination of 'primitive' or 'backward' Chinese customs went hand in hand with the oppressive public health laws. Second, the interrelationships between the transplanted law and local Chinese community were not unified but varied considerably in different contexts in terms of different political, economic and social conditions.

This thesis explores in new ways the various patterns of relations that evolved between transplanted law and Chinese tradition in this small part of the British Empire, and adds significantly to our existing knowledge of the nature of colonial law, to our understanding of the legal and social history of Hong Kong and, in comparative law discourse, to the phenomenon of legal transplantation.

Acknowledgements

I have to thank my principal supervisor, Professor Michael Palmer, for his insightful comments and unfailing assistance throughout the development of this dissertation. I also thank my second supervisor, Dr. Sanzhu Zhu, for his kind help in the early stages of my research.

My gratitude shall also be expressed to the Funding of LSE Friends in Hong Kong, with Sir Charles Lee and Mr. Kevin Chan in particular. Thanks to them for their generous financial supports for my LLM at LSE (2005-2006) and PhD at SOAS (2006-2011). In 2008, SOAS awarded me a grant to carry out my fieldwork in Hong Kong. Without such generosity, this research would have been much less easy.

I have benefited from discussions with Professors Billy So, Carol Tan, Peter Wesley-Smith, Max Wong, Puiyin Ho, Elizabeth Sinn, Ka-chi Yep, Albert Chan, Sian Griffiths, Shiu-hung Lee, Erich DeWald and Sun-pao Ting at various stages in this research. Any errors in judgement or interpretation however are mine. I am also grateful for the kind invitations to share my papers in conferences held at Manchester University (2009), Bristol University (2009), Chinese University of Hong Kong (2009, 2010), Hong Kong University (2010), Shantou University(2012), and Singapore University (2012). The comments and encouragements received at these events on my unfolding thesis work have been invaluable. Special appreciation is given to the Workshop on Law and Orientalism held at Notre Dame Law School in London (2011) for inspiring developments in the theoretical framework of my thesis. My lecture delivered at King's China Institute, London (2011) was welcomed by the students and enhanced my self-confidence as a scholar.

The staff of the National Archives (London), the Special Hong Kong Collection (University of Hong Kong), SOAS library, the British Library, LSE library, the British Parliament Library, the Public Record Office (Hong Kong), the Museum of the Tung Wah Group Hospitals and the archival office of the Po Leung Kuk deserve special commendation. They had never failed to help me to track down many highly useful sources.

I also thank my colleagues and friends in Hong Kong and Guangzhou. Their patience and understanding have greatly reduced my pressure and anxieties for leaving my work behind and pursuing the study abroad for years. My friends Drs. Patricia Ng, Qionglin Lü, Guoming Li, Jianyong Yue, Man Chen, Chao Xi, and Jing Bian, and Ms. Josefina Arcos Miguez, Ms. Lima Begun and many others have given me their heartwarming friendship and many encouragements. Certainly, my family should be given my final note of thanks. My parents and elder sister's family have been a constant source of comfort and strength. I dedicate this thesis to Dr. Guangming Han, who provides me with all the bliss a husband could possibly render.

Abbreviations

BMJ	<i>British Medical Journal</i>
CD	<i>Contagious Diseases</i>
CM	<i>China Mail</i>
CO 129	Great Britain. Colonial Office. Original Correspondence: Hong Kong, 1841-1951. Series 129.
CSCHK	Correspondence regarding the Sanitary Conditions of Hong Kong
DP	<i>Hong Kong Daily Press</i>
HKGCC	<i>Hong Kong General Chamber of Commerce</i>
HKGG	<i>Hong Kong Government Gazette</i>
HKH	<i>Hong Kong Hansard</i>
HKLR	<i>Hong Kong Law Reports</i>
HKT	<i>Hongkong Telegraph</i> ¹
HKWP	<i>Hongkong Weekly Press and China Overland Trade Report</i>
IMOR	Report of the Inspecting Medical Officer of the Tung Wah Hospital
PHBB	Public Health and Buildings Bill
PHBO	Public Health and Buildings Ordinance
PLK	Po Leung Kuk
PP	(British) Parliament Papers
PP.HC.	British Parliamentary Papers, House of Commons
SP	Hong Kong Sessional Papers
TWR	Report of the Commission appointed by H.E. Sir William Robison ... to enquire into the Working and Organization of the Tung Wa Hospital together with the Evidence taken before the Commission and other Appendices
TWH	Tung Wah Hospital ²
VD	<i>Venereal Diseases</i>

¹ Prior to 1926, 'Hong Kong' was spelt 'Hongkong' in one word with a small 'k', and some organizations such as the Hongkong and Shanghai Bank, the Hongkong Ophthalmic Society and so on still use the old spelling. See Solomon Bard, *Voices from the Past: Hong Kong 1842-1918*, Hong Kong: Hong Kong University Press, 2002, p.5. In the present study, a number of citations and organization names therefore use 'Hongkong' rather than 'Hong Kong'.

² The 'Wah' of the Tung Wah Hospital was originally spelt as 'Wa' without a 'h'. The two terms of the 'Tung Wah' and 'Tung Wa' were inter-changeable in Hong Kong's early public health reports. But from 1921 onwards, it was the 'Tung Wah' rather than 'Tung Wa' appeared in various health reports. Academic researches on this hospital almost unify using 'Tung Wah'. This current study also adopts the common usage of the 'Tung Wah' but preserves the original spelling of 'Tung Wa' in early public health reports.

Table of Contents

Declaration	2
Abstract	3
Acknowledgements	4
Abbreviations	5
Table of Contents	6
List of Figures and Tables	7
Chapter 1: Introduction: Thesis, Theories, Methodologies and Structure	8
Chapter 2: The Hong Kong Setting.....	31
Chapter 3: Body Controls: A critical case study of the Contagious Diseases Laws.....	54
Chapter 4: Plague Controls: The Plague came and Chinese ways had to go.....	84
Chapter 5: Space Controls: Building Regulation and Chinese Resistance.....	112
Chapter 6: Exclusion as Oppression: A Quest for Chinese Medicine's extra-legal Status..	142
Chapter 7: Conclusion.....	178
Appendix 1: List of (Acting) Governors and Administrators	197
Appendix 2: Hong Kong's Medical and Sanitary Laws (1844-1941).....	198
Appendix 3: Population of Hong Kong	224
Bibliography	226

List of figures and tables

Figures

Figure 2.1: ‘The Waterfall at Hong Kong, 1816’	34
------------------------------------------------------	----

Tables

Table 6.1: Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Tung Wah Hospital (1897-1938).....	174
Table 6.2a: Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Kwong Wah Hospital (1911-1938).....	175
Table 6.2b: Annual statistics and proportion of outpatients under Chinese and Western treatment respectively in the Kwong Wah Hospital (1911-1935).....	176
Table 6.3a: Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Tung Wah Eastern Hospital (1929-1938).....	177
Table 6.3b: Annual statistics and proportion of outpatients under Chinese and Western treatment respectively in the Tung Wah Eastern Hospital (1929-1935).....	177

Chapter One

Introduction: Thesis, Theories, Methodologies and Structure

1. Thesis and questions

The colonial history of Hong Kong has been partly legitimized by western style modernization and a legal system embracing the value of the rule of law.¹ Being part of that legal system, Hong Kong's public health system would seem to be an outstanding example of an achievement that could be largely attributed to a wonderful westernization process. The process of transplanting British common law to Hong Kong was indeed very important for the development of legal order in Hong Kong. The former colony's public health law also played an important role in Hong Kong's transformation from a traditional Chinese community to a modern metropolitan society.

What is the role of law in social transformation in the case of colonial Hong Kong? How did the transplanted British style public health law impact and shape Chinese sanitary and medical customs? How did the local Chinese population respond to the alien law imposed by Hong Kong's colonial rulers? These are important questions regarding the nineteenth and early twentieth century transformations taking place in Hong Kong. But hitherto the contributions of Chinese local society in such matters have been seriously neglected and undervalued. As Lauren Benton has pointed out, during the process of colonial legal ordering there are always likely to be cultural conflicts between the imposed laws and indigenous laws.² The formation of Hong Kong's legal ordering was also filled with such cultural conflicts. Yet, hitherto, few scholars have approached Hong Kong's legal history in terms of the dynamic interactions between the European colonizers and the local Chinese population, and many studies have failed to take into account the perspectives of the local Chinese community. Bearing these key issues in mind, this thesis explores in new ways the

¹ Hong Kong, transformed from the British colony to Special Administration Region of the People's Republic of China after 1 July 1997, is a famous and prosperous metropolis with good international reputation of rule of law, which was regarded as one of the major legacies of British colonial rule in Hong Kong. See Albert H.Y. Chen, *The Rule of Law Under 'One Country, Two Systems': The Case of Hong Kong 1997-2009*, paper presented at the conference on 'Benchmarking Development of the Rule of Law in Asia: 1999-2009', held by the Maureen and Mike Mansfield Foundation & National Taiwan University College of Law, 9-13 September 2009, Taipei, Taiwan; Sin Wai Man and Chu Yiu Wai, *In the Name of Law: Legality and Morality in Postcolonial Hong Kong*, in 27 *International Journal of the Sociology of Law*, 1999, pp.185-205.

² Benton believes that the legal transformations in the long nineteenth century is not as the rise of the rule of law but as an interactive cultural politics concerning on rules about law. See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, Cambridge: Cambridge University Press 2002, Chapter 1.

various patterns of relations that evolved between transplanted law and Chinese tradition, and adds significantly to our understanding of social change in Hong Kong as well as our existing knowledge of the nature of colonial law.

1.1 Why an historical approach?

One advantage of historical investigation is that we can use it to see the whole process of the development of a particular law, from its genesis to its application and subsequent reform. Sometimes, the appearance of the social effects of a law takes years to occur. As Professor Allot points out in his book *The Limits of Law*, rapidly changing reality may well push lawyers to produce huge amounts of legislation without the slightest reflection upon the real effects of such law on society.³ In this sense, a systematic and general analysis of legal phenomenon is often best done as an historical one, so that a more properly longitudinal view can be taken of the effects of important legislative change.

Looking at the chronology of Hong Kong's legal history, we find that from the 1840s to 1941, the colonial government's ruling policies over Chinese subjects were roughly the same throughout. Though some Governors were more sympathetic to Chinese customs and traditions than others, their pro-Chinese policies hardly brought Chinese community closer to the European community but rather often provoked harsh and bitter criticisms from the latter. Between 1941 and 1945 was the period of Japanese occupation. When the British returned to Hong Kong after the Second World War, they saw many things had changed. Correspondingly, British policy in Hong Kong started to change. During the first hundred colonial years preceding the war, however, comparatively speaking there was a great deal of continuity.⁴

During the same period under review, mainland China in contrast experienced many dramatic changes. The Qing dynasty was overthrown in 1911, and the Republic of China established the next year. From 1920 onwards, mainland China suffered various wars such as a ten-year war-lord period (1920-1930) and an 8-year Sino-Japanese war (1937-1945). This was followed, of course, by an all-out Civil War until the creation of a People's Republic in 1949. Blessed by British governance of Hong Kong, Chinese people in this tiny colony were free from wars and dramatic social turbulence. Many aspects of Chinese traditional culture were better preserved in Hong Kong than in mainland China. One social indication would be that of clothes. Until late in the 1930s the committee members of prominent local communities wore traditional Chinese dress at their deliberations and on several ceremonial

³ Antony Allott, *The Limits of Law*, London Butterworth, 1980, p.23.

⁴ During this period under review, there were several riots and serious strikes. But the events were soon settled down. See Wai Kwan Chen, *The Making of Hong Kong Society: Three Studies of Class Formation in Early Hong Kong*, Oxford: Clarendon Press, 1991, Chapter 5.

occasions held each year.⁵ Indeed, many of the traditional law and customary rules of the Qing Dynasty were still applied after 1911. Chinese family customs, such as concubinage for instance, existed as late as the 1970s.⁶

To be sure, a clear cutting line does not exist in historical events. Things intertwine together and evolve onwards with an ever growing causal chain. A sophisticated historian needs to balance the completeness of a story and the many details of vast materials. For the convenience of research, the period from the 1840s and 1941 is selected but not fixed absolutely. In some cases, this study engages with events of the 1950s. But in general, due to the relative stability of political and legal environment, the first hundred years of colonial Hong Kong provides an ideal period to observe the role of English law and its interactions with a traditional Chinese society.

However, the disadvantage of historical research is also apparent, especially when the chosen period occurred such a long time ago. The relevant data about the relevant legal events might be relatively scattered. Besides, observing old cases from a present-day perspective, one might misrepresent history. Much caution must be observed in order to undertake a suitably rigorous case study. Thus, under the guidance of the research questions, whether there are enough materials on such topics becomes an important concern in choosing the cases to focus on.

1.2 Why the public health perspective?

In early colonial Hong Kong, Chinese ‘insanitary’ presence together with their ‘un-scientific’ medicine had long been accused of being a menace to public health. As early as in the 1840s, when the newly arrived British colonists were stricken by the so-called ‘Hong Kong Fever’ (later identified as malaria), the ill constructed ‘native Chinese houses’ and the local paddy fields growing the much needed local staple of rice, were suspected as possible causes of the fatal endemic.⁷ In the 1850s and 1860s, syphilis prevailed among European troops in Hong Kong. The filthy conditions of the Chinese brothels were criticized as the source of this contagious disease by the medical authorities. When the bubonic plague broke out in 1894, insanitary Chinese houses in the Colony were immediately blamed as the source of the formidable bubo disease. And the ‘un-scientific’ Chinese medicine was accused

⁵ Henry J. Lethbridge, *Hong Kong: Stability and Change, A Collection of Essays*, Hong Kong Oxford University Press, 1978, Chapter 4, p.95. Also see the pictures of the Committee of Po Leung Kuk in *History of the Po Leung Kuk Hong Kong, 1878-1968*, Hong Kong: Po Leung Kuk, 1969.

⁶ D.J. Lewis, ‘A Requiem for Chinese Customary Law in Hong Kong’ in 32 *The International and Comparative Law Quarterly*, 1983, pp.347-79.

⁷ See ‘the Second Report of Committee on Public Health and Cleanliness’, in *Hong Kong Register*, 10 September 1844, pp.154-155.

dangerous to public health by colonial medical authorities. When the threat of plague gradually died out and was replaced by the highly contagious tuberculosis in the 1920s, the overcrowding and filthy Chinese houses of Hong Kong were once again condemned by the Europeans as constituting the ‘perfect harbour of tuberculosis germs’.⁸ In short, in the early stage of Hong Kong’s public health development, especially in the period before the Second World War, Chinese often played the role of scapegoat for the recurrence of endemics and epidemics.

In the name of improving public health, many Chinese sanitary and medical customs were put under stringent regulation in line with western standards. Hong Kong’s public health laws were among the most intrusive laws especially from Chinese perspective. Public health became a place full of conflicts between the transplanted laws and local Chinese customs. The development of Hong Kong’s public health law, therefore affords us a very good perspective for observing the complicated interactions between the transplanted law and local society.

Despite such importance of the public health, to date no research has been published on this aspect of Hong Kong’s legal history. Hopefully this thesis could shed some light on the very complicated relationships between transplanted laws and local society, both in the Chinese context and more generally.

2. Theories

For an exercise in historical legal research, theory is like a beacon shining in the dark and endless ocean of archival materials. Without the guidance of theories, this study would easily fall into the details of historicity and lose analytical insights. Thus before we embark the empirical adventure, it is necessary to sort out theories related to current study, particularly theories on law and colonialism. This section first reviews theories on legal transplants. However, the often heterogeneous milieu in the colonial contexts challenges the concept of legal transplants and calls upon a more fluid or less rigid definition of law. Legal pluralism is subsequently visited. Informed by post-colonial discourse, some critical theories such as legal orientalism are selected to guide this thesis’ empirical study of Hong Kong’s legal history.

2.1 Legal transplant in the colonial context

The phenomenon of colonial rule has often involved transferring laws from one society to another. The concept of legal transplant in conventional jurisprudence is regarded as an important tool for comparative legal study, and one which describes the process of

⁸ Margaret Jones, ‘Tuberculosis, Housing and the Colonial State: Hong Kong, 1900-1950’, in 37 (3) *Modern Asian Studies*, 2003, pp.653-682.

transfer of legal rules with a specific cultural background from one jurisdiction to another.⁹ However, the concept of legal transplant has its limits in colonial contexts. Jean-Louis Halperin notices that Alan Watson's concept of legal transplant has largely relied upon the experiences of European reception of Roman law and the direct implementation of common law in uninhabited overseas territories.¹⁰ In multi-cultural territories such as European colonies in Africa and Asia, as suggested by Nelken, the concept of legal transplants might be oversimplified, ambiguous and quite inappropriate.¹¹ Harding further asserts that the narrative of legal transplant 'obscures our lack of real knowledge and understanding of law and society in South East Asia'.¹² Harding's assertion can also be applied to the study of Hong Kong's legal development.

However, comparative legal studies in colonial contexts often slip into another epistemological pitfall, which is to regard western legal traditions and the making of modern law as worthy Euro-American symbols of progress and developmentalism.¹³ Fortunately, in recent decades there has been an impressive growth of inter-disciplinary studies on colonial laws and this has encouraged a more skeptical approach.¹⁴ Among various post-colonial studies, Cotterrell's socio-historical approach provides one effective way to overcome the limits of the concept of legal transplants in analyzing colonial settings. Since law's relevance to community is complex, diverse and variable, there is no general logic of legal transplants. Cotterrell thus suggests to find the way that 'can be used to aid analysis of law as an aspect

⁹ Alan Watson, *Society and Legal Change*, Temple University Press, 2nd ed., 2001, p.79; see also Alan Watson, *Legal Transplants, An Approach to Comparative Law*, Athens, Georgia: University of Georgia Press, 1993.

¹⁰ Jean-Louis Halperin, 'Legal Transplants: Western Legal Transplants and India', in 2 (1) *Jindal Global Law Review*, 2010, pp.12-39. The settlers' colonies mainly refer to Australia, Canada, New Zealand and the United States.

¹¹ D. Nelken, 'Comparatists and transferability', in Pierre Legrand, Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge: Cambridge University Press, 2003, pp.437-466.

¹² Andrew Harding, 'Comparative Law and Legal Transplantation in South East Asia', in D. Nelken & J. Feest eds., *Adapting to Legal Cultures*, Oxford: Hart Publishing, 2001, p.203; Andrew Harding, 'Global Doctrine and Local Knowledge: Law in South East Asia', in 51 (1) *International and Comparative Law Quarterly* 51 (1) 2002, p.49.

¹³ Upendra Baxi first traces what is inherent in the process of imposition of alien law by conquest, in terms of both ideology and institutions. See Upendra Baxi, *The colonialist heritage*, in Pierre Legrand and Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge: Cambridge University Press, 2003, pp.48-75.

¹⁴ Foster, Hamar, Berger, L. Benjamin and A. R. Buck, *Introduction: does law matter? The New colonial legal history*, in Hamar Foster, Andrew Buck, Ben Berger eds., *The Grand experiment: law and legal culture in British settler societies*, University of British Columbia Press, 2008, pp.1-12; D. Greenleaf et al., *Digitising and Searching Australasian Colonial Legal History*, UNSW Law Research Paper No. 2012-23, 13 July 2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2111056&download=yes, visited on 14 July 2013.

of social life in particular empirical settings'.¹⁵ Russell Smandych further suggests an ambitious goal of developing a more adequate comparative and transitional historical sociology of colonial law, which aims to provide 'a more explicit sociologically informed perspective' to the study of colonial law and its application.¹⁶

Realizing the theoretical limits of legal transplantation in colonial settings, the current research takes a socio-historical approach to the study of Hong Kong's legal development. By putting specific public health ordinances against a concrete historical backdrop, the complicated relations between transplanted British law and the local Chinese community are vividly presented. As will be seen in the core chapters of this dissertation, the transplantation of British public health laws to colonial Hong Kong was frequently accompanied by colonial coercion, local resistance, and also co-operations. Just as Henry Lethbridge argues, the term the 'rule of law' covers much more than it reveals.¹⁷ The more in detail we look at the history of Hong Kong, the more doubts we have about the legitimacy of the authority of the colonial laws applied to Chinese subjects. If in their daily life, Chinese subjects lived mainly according to Chinese traditional medical and sanitary customs rather than the transplanted British public health laws, would Hong Kong still claim to have been a successful legal transplanter of public health law? The co-existence of two medical and sanitary systems in colonial Hong Kong raises another theoretical issue, namely that of legal pluralism.

2.2 Legal pluralism

Legal pluralism is one important concept in the post-colonial view of law, and one which provides another useful theoretical tool to analyse the interactions between indigenous laws (including social customs) and imposed European laws, with reference to the

¹⁵ Roger Cotterrell, 'Is there a Logic of Legal Transplants?', In D. Nelken & J. Feest eds., *Adapting to Legal Cultures*, Hart Publishing 2001, p.89. Munday and Örtücü held the same opinion and believe that formidable challenges awaiting tomorrow's comparatists whose tasks are to trace the improbable paths taken by migrating laws, of investigating the ways in which they come to be assimilated, rejected or refashioned within the host system, of analyzing the consequences that flow from this process of transplantation and adaptation and, finally, of assessing the inevitable conceptual implications inherent in these phenomena. Roderick Munday, *Accounting for an encounter*, in Pierre Legrand, Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge: Cambridge University Press, 2003, p.9. See also Esin Örtücü, *A Theoretical Framework for Transfrontier Mobility of Law*, in R. Jagtenberg, Esin Örtücü and A. de Roo eds., *Transfrontier Mobility of Law*, The Hague: Kluwer, 1995, pp.5-18.

¹⁶ Russell Smandych, 'Mapping Imperial Legal Connections: toward a comparative historical sociology of colonial law', in 31 *Adelaide Law Review*, 2010, pp.187-228.

¹⁷ Henry Lethbridge, 'The Evolution of a Chinese Voluntary Association in Hong Kong: the Po Leung Kuk', and 'The District Watch Committee: the Chinese Executive Council of Hong Kong?', in H. Lethbridge, *Hong Kong: Stability and Change, a Collection of Essays*, Hong Kong: Oxford University Press, 1978, Chapters 4 and 5 respectively.

relationship between colonized and colonizer.¹⁸ Sally Engel Merry categorizes the theory of legal pluralism as consisting of both 'classical' legal pluralism and 'new' legal pluralism.¹⁹ The classical understanding is concerned with how alien laws are superimposed on indigenous customary laws, and the newer understanding moved to conceptualize a more complex and interactive relationship between the formal colonial laws and the laws without colonial state.²⁰

The concept of customary law sits in the core of legal pluralism in the colonial context. In imperial discourses, indigenous customs are usually regarded as 'primitive' or 'backward' and thus doomed to be replaced by transplanted colonial laws.²¹ Through investigation of colonial laws in Africa and Asia, scholars -- legal anthropologists in particular -- have challenged this imperial view of customary law.²² Sally Engel Merry argues that customary laws are historically derived and evolved rather than locked into a static existence.²³ And the so-called customary law was forged or formed in the interactions among various actors including colonial power, settled aliens, local elites, cultural intermediaries and other

¹⁸ The concept of legal pluralism is mainly created by the study of legal anthropology. See M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*, Oxford: Clarendon Press, 1975.

¹⁹ Sally Engle Merry, 'Legal Pluralism', in 22(5) *Law & Society Review*, 1988, pp.869-896.

²⁰ Russell Smandych and Gloria Lee, 'Women, Colonization and Resistance: Elements of an Amerindian Auto-historical Approach to the Study of Law and Colonialism', in 10 (1) *Native Studies Review*, 1995, pp.21-46.

²¹ Francis G. Snyder, 'Colonialism and Legal Form: the Creation of 'Customary Law' in Senegal', in 19 *Journal of Legal Pluralism*, 1981, p.49. Snyder argues that the notion of customary law in Africa belongs to an ideology accompanied and formed part of colonial dominance.

²² Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge University Press, 1985; Sally Falk Moore, *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880-1980*, Cambridge University Press, 1986. As for the concept of customary law in the colonial context, see also M. Freedman, *Colonial Law and Chinese Society*, in 80 (1/2) *The Journal of the Royal Anthropological Institute of Great Britain and Ireland*, 1950, pp.97-126; J.N.D Anderson, 'Colonial Law in Tropical Africa: The Conflict Between English, Islamic and Customary Law', in 35 (4) *Indian Law Journal*, 1960; M.B. Hooker, 'The Relationship between Chinese Law and Common Law in Malaysia, Singapore and Hong Kong', in 28 (4) *The Journal of Asian Studies*, 1969, pp.723-742; Michael R. Anderson, *Islamic Law and the Colonial Encounter in British India*, in David Arnold and Peter Robb eds., *Institutions and Ideologies: A SOAS South Asia Reader*, Richmond, Surrey: Curzon Press, 1993; Bridget Brereton, *Law, Justice and Empire, The Colonial Career of John Gorrie, 1829-1892*, University of the West Indies Press, 1997; Neeladri Bhattacharya, *Remaking Custom: The Discourse and Practice of Colonial Codification*, in R. Champaklaxmi and S. Gopal eds., *Tradition, Dissent and Ideology: Essays in Honour of Romila Thapar*, 2001; Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal*, Oxford University Press, 2008; David B. Schorr, 'Questioning Harmonization: Legal Transplantation in the Colonial Context', in 10 (2) *Theoretical Inquiries in Law Forum*, 2009, Article 3.

²³ Sally Engel Merry, *Legal Pluralism*, p.890.

colonized subjects.²⁴

Informed by the understanding offered by the new legal pluralism and its characterization of the place of customary laws, this study also applies a 'from-bottom-to-top' socio-legal perspective to access Hong Kong's legal history, a perspective that hitherto has often been neglected by legal scholars. Thus, instead of emphasizing the effect of the superior common law system to the inferior Chinese customary law, the revised questions focus on the interaction between different legal/normative orders: how do these systems interact and reshape one another? To what extent is the dominant system able to control the subordinate?

Guided by the above revised questions, this study seeks to base itself on materials, especially as found in archives, that reflect Chinese opinions and standpoints in particular that we could have a balanced view from both sides on the interactions between the transplanted public health laws and local Chinese sanitary and medical customs. On the basis of a close examination of relevant laws and events, this study argues that local Chinese support or resistance to some extent changed the trajectory of legal transplantation, but hardly got the chance to subvert the dominant system. For instance, no matter how hard Chinese style medical practitioners had tried, Chinese medicine remained extra-legal status throughout Hong Kong's colonial history. The legal transplanting process in micro-perspective may be complicated but in macro-perspective, it is still a one way direction. Why were Chinese elements not absorbed into the transplanted legal system? To answer this question, we need to resort to another theory, namely, legal orientalism.

2.3 Legal orientalism

It is not strange that in a colonial setting, local laws and customs were suppressed, excluded or replaced by the transplanted alien laws. Such an aggressive style of legal transplantation was often justified by the 'white man's burden' or mission of dispersing civilized culture to primitive oriental societies, a justification that has been challenged by Edward Said in his seminal work *Orientalism*.²⁵ The discourse of orientalism is an eclectic system and a form of disciplined ideological presence, which deals with the problems of knowledge and imagination, politics and writing, freedom and oppression in the relations between the Orient and the Occident.²⁶ In Said's opinion, a classic orientalist perspective assumes western superiority over the primitive 'otherness' via a misrepresented East, so that it might serve to justify western desires to manipulate and exploit the East.

²⁴ Sally Engel Merry, 'Law and Colonialism', in 25 (4) *Law & Society Review*, 1991, p.897.

²⁵ Edward Said, *Orientalism*, London: Penguin, 2003.

²⁶ Edward Said, *Power, Politics, and Culture: Interviews with Edward W. Said*, London: Bloomsbury Publishing PLC, 2004, pp.37-38.

Said's ideas of orientalism have inspired scholars of different disciplines and generated many groundbreaking researches on comparative studies of arts, literature, history, law and politics. Stimulated by Said's ideas of orientalism, Teemu Ruskola applies the concept of legal orientalism to describe how the image of a 'lawless' China justified the U.S' extraterritorial rights in China and encouraged the passage of anti-Chinese immigration laws in the 19th century.²⁷ Ruskola further indicates that the image of 'inherent lawlessness' inherits the traditional Eurocentrism of legal scholarship and implicitly applies western law as a yardstick to compare, gauge, undervalue or exclude social control systems in non-western legal cultures.²⁸

Hong Kong's legal history has also tapped to the sound of strong orientalist tunes. When colonial Hong Kong was newly established, a grand blue print had been envisioned, that is to build Hong Kong as a display case for the 'superior civilization of the west', a model of British good government and a living exhibition of European civilization.²⁹ But the colonial government soon deviated from such idealism to a greater realism by imposing colonial laws more stringent than corresponding English laws at home. Such deviation is often justified by Chinese 'inherent lawlessness', who 'totally ignorant and indifferent as to western ideas or modes of Government' and made British 'benevolent rule and human laws enormously difficult.'³⁰ This image of Chinese 'inherent lawlessness' constitutes a typical expression of legal orientalism.

However, not many legal scholars have approached Hong Kong's legal history through the critical perspective of legal orientalism. The difficulties of applying legal orientalism, as some comparative lawyers suggest are not in lacking of empirical materials but rather lie in the observers' legal epistemology, his or her definition of law.³¹ So long as the observer upholds that 'law' has the priority to tackle the 'problems' in oriental societies, the social problems produced by the 'law' could hardly be correctly recognised. The imperialist orientalist discourses are so powerful that the voices of subjugated masses were often

²⁷ Teemu Ruskola, *Legal Orientalism: China, The United States and Modern Law*, Cambridge, Mass.: Harvard University Press. 2013, p.8, p.49 and p.143.

²⁸ Such a narrow functionalist methodology, as some legal scholars have emphasized, has greatly confined the potential of comparative legal studies. See T. Ruskola, *Legal Orientalism*, p.179 and K.B. Nunn, 'Law as an Eurocentric Enterprise', in 15 *Law & Inequality*, 1997, p.323.

²⁹ Christopher Munn, *Anglo-China: Chinese People and British rule in Hong Kong, 1841-1888* Richmond, Surrey: Curzon, 2001, pp.1-2.

³⁰ J.W. Norton-Kyshe, *The History of the Laws and Courts of Hong Kong, from the earliest period to 1898*, Hong Kong: Vetch and Lee Limited, 1971 2nd ed., p.vii.

³¹ Teema Ruskola, *Legal Orientalism*, p.229; K Goodwin, 'Travelogue writers in the Age of Inquiry: Law, Orientalism, and Enlightenment Ideology in Southeast Asia' in 2 (1) *The Forum: Journal of History*, 2008, p.3. Available at: <http://digitalcommons.calpoly.edu/forum/vol1/iss1/5>. visited on 10 June 2011.

neglected or misrepresented. Legal orientalism challenges the orthodox imperial discourse on the difference between the colonizer and the colonized people, and switches our focus from a dominant narrative about a particular law to marginalized voices and values.³² Thanks to the sensitivities of Said's analysis and concept of orientalism, the previously omitted voices are now receiving more and more attention.

But Said's notion of orientalism is not without critics. James Clifford comments that 'Said's work frequently relapses into the essentializing modes it attacks and is ambivalently enmeshed in the totalising habits of western humanism.'³³ Perhaps due to its essentialising characteristic, orientalism is effective enough to account for cultural interactions in a macro-perspective but then fails to explain the co-operations between western colonists and the colonized on a micro day-to-day level. As will be seen in this study, the Chinese community elite in Hong Kong not infrequently assisted the colonial government so as to enforce public health laws and policies on a reluctant Chinese community. How best to understand the rationales behind the co-operation between the colonizers and the subjugated? Some post-colonial theories, such as colonial governmentality and legal hegemony, throw light on the very complicated relationship between alien law and local society.

2.4 Colonial governmentality

Based on Foucault's notion of 'governmentality',³⁴ David Scott develops the concept of 'colonial governmentality' to explore the political rationales of colonial power.³⁵ During the colonization, the colonizers have deployed different strategies to enforce or legitimize its colonial rule over the colonized populations. The political rationales and strategies of colonial governmentality are not so consistent nor that systematic, but rather are often based

³² Carol Tan, 'How A "Lawless" China Made Modern America: An Epic Told in Orientalism', in 128 *Harvard Law Review*, 2015, pp.1677-1704, at pp.1680-1682.

³³ James Clifford, *The Predicament of Culture*, Cambridge, Mass: Harvard University Press, 1988, p. 271.

³⁴ M. Foucault, *Governmentality*, first published in 1978, later collected in G. Burchell, C. Gordon, and P. Miller eds., *The Foucault Effect: Studies in Governmentality*, Chicago: University of Chicago Press, 1991, pp.87-104. Foucault viewed power as technology or strategy rather than a possession or a repressive force. Foucault also suggested that historical analysis should be concerned with how power was exercised its practices, strategies and technologies at micro-level, as his proposal for the study of the micro-physics of power. See Foucault, *Power/Knowledge, Selected Interviews and Other Writings, 1972-1977*, New York: Pantheon Books, 1980.

³⁵ David Scott, 'Colonial Governmentality', first published in 43 *Social Text*, 1995, later collected in David Scott, *Refashioning Futures: Criticism After Postcoloniality*, New Jersey: Princeton UP, 1999, pp.23-52. It shall be noted that the colonial governmentality is different from Foucault's concept of governmentality. See Giorgio Shani, *Empire, Liberalism and the Rule of Colonial Difference: Colonial Governmentality in South Asia*, in *Ritsumeikan Annual Review of International Studies*, 2006, Vol.5, pp. 19-36; Tariq Jazeel, *Governmentality*, in 27 (3) *Social Text*, 2009, p.100.

upon pragmatism. Law, as a crucial part of colonial power, often helped to reconstruct the colonized society through different strategies.³⁶ The concept of colonial governmentality reminds us of the need to pay more attention to the diversity in the rationales behind different colonial projects and strategies.³⁷

In discussing different strategies of colonial governmentality, scholars often encounter the question of colonial dominance or legal hegemony. Colonial dominance is closely connected with violent conquest and resistance. For the study of Indian colonial history, the Subaltern School firmly denies the subjugated peoples' influences on shaping the colonial state.³⁸ The leading scholar of the Subaltern School, Guha describes the colonial state as 'dominance without hegemony'. According to subaltern theory, the colonial power relied heavily on coercion instead of persuasion and the society's internal dynamic was never involved in the imposition of the alien authority structure.³⁹

However, the Subaltern School has been criticized by the Cambridge School. The latter portrays colonial institutions as the result of interactions of imperial rule and native responses.⁴⁰ For the Cambridge School, Gramscian ideas of hegemony are appropriate to depict the relationship between coercion and the creation of consent.⁴¹ The ultimate aim of colonial governmentality is to keep the colonial order over the colonized, and for this, the colonial power must try to gain its legitimacy by constructing a hegemonic discourse. The colonizers can't just imagine that they are superior over the colonized and rest content. They must try to avoid their so-called legitimacy being contested and to make it acceptable to the colonized, at least to the local elites. Influenced by the intellectual movements of post-

³⁶ Mindie Lazarus-Black, Susan F. Hirsch eds., *Contested States: Law, Hegemony and Resistance*, Routledge, 1994, 1st edition. The essays collected in this book, mainly contributed by anthropologists and historians, examine how hegemony is created and facilitated through law as well as how people use legal arenas to resist oppression.

³⁷ Nicolas Thomas, *Colonialism's Culture, Anthropology, Travel and Government*, Cambridge 1994; Deana Heath, *Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australia*, Cambridge University Press, 2010, pp.11-12.

³⁸ David Ludden ed., *Reading Subaltern Studies: Critical History, Contested Meaning and the Globalization of South Asia*, London: Anthem Press, 2002.

³⁹ Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India*, Harvard University Press, 1997, Preface XII, p.64.

⁴⁰ Douglas M. Peers and Nandini Gooptu, *Introduction*, in Douglas M. Peers and Nandini Gooptu eds., *India and the British Empire (the Oxford History of the British Empire Companion Series)*, Oxford University Press, 2012, p.4.

⁴¹ Dagmar Engels and Shula Marks, *Introduction: Hegemony in a colonial context*, in Dagmar Engels and Shula Marks eds., *Contesting Colonial Hegemony: State and Society in Africa and India*, British Academic Press, 1994, p.1. Gramsci developed the concept of hegemony to emphasize the consensual submission of a social group dominated by another in the *Prison Notebook*. And the domination with hegemony is different that with physical force. See Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Hoare, Quintin and Smith, Geoffrey Nowell eds., International Publishers Co, Reprint edition, 1971.

modernism and post-structuralism, including post-colonialism,⁴² Sally Engle Merry has proposed the notion of multiple hegemonies replacing the singular notion of hegemony.⁴³ Just as Gramsci's comments on the constitutive function of law, the colonial laws sometimes perform non-repressive function of colonial rule inducing a mode of life as legal or law-abiding, which could be concluded as legal hegemony.

During the legal transplanting process, were Chinese subordinate systems able to subvert or evade the dominant system? Are there ways in which the disputing strategies of subordinate users reshape the dominant system? In other words, was British Hong Kong's colonial governmentality based upon colonial dominance or dominance with legal hegemony? We shall return to these theoretical problems in the concluding chapter to this dissertation.

3. Methodologies

There are several methods incorporated in this research. The dissertation as a whole is primarily based on empirical and historical investigation. Among the many empirical methods available, the most relevant and useful method to be applied in this research is that of the case study. Since most of the resources for this dissertation are interdisciplinary – ranging across Hong Kong's history of public health development including sanitation and medicine, building/urbanization regulations -- it is thus crucial that the archival research and methodology be thorough and accurate.

3.1 Case study

Case study research is a systematic analysis of multiple forms of data that enhances understanding of a given context and those who act in that context.⁴⁴ The case study has a distinctive value when a 'how' or 'why' question is being asked about a set of contemporary events.⁴⁵ As 'how' and 'why' questions are the very questions most fundamental to my research, case study methodology appears to be quite appropriate to the thesis. However, achieving good quality case study research is difficult. It requires establishing a systematic process to trace the events, and analyzing the cases rigorously and neutrally. That is why many case studies are carried out for contemporary events, for the easy access to the datum

⁴² Douglas Litowitz, 'Gramsci, Hegemony, and the Law', in 2 *Brigham Young University Law Review*, 2000, pp.515-551.

⁴³ Sally Engle Merry, *Courts as Performance: Domestic Violence Hearings in a Hawai'i Family Court*, in Mindie Lazarus-Black, Susan F. Hirsch eds., *Contested States*, 1994. Merry claims that law shall be viewed as incorporating contradictory discourses about equality, justice, and persons.

⁴⁴ Robert K. Yin, *Case Study Research: Design and Methods*, Thousand Oaks, Calif.; London: Sage Publications, 2003, p.6.

⁴⁵ *Ibid.* p.8.

and statistics. But this does not mean case studies cannot be applied to historical investigations. If the historical materials are abundant, as discussed in the very beginning of this Introduction, the advantage of a historical perspective is also apparent.

The foremost criterion for the case selection in this study is therefore the availability of data resources. Some cases might be very interesting and representative for the current research purposes but due to insufficient data, especially archival materials, these cases might have to be omitted. A good example is that of information about Hong Kong's early sanitary laws. Originally, this study intended to investigate Hong Kong's public health laws in a chronological sequence. That is, it would start from Hong Kong's very first public health laws of the Good Order and Cleanliness Ordinance No.4 of 1845 and its replacement of the Summary Offences Ordinance No.14 of 1845. By investigating from its genesis to its application and subsequent reforms, this study would attempt to uncover the interactions between law and society, and to further investigate how the transplanted British public health laws impacted and shaped local Chinese customs. However, on a closer scrutiny of relevant archives, it is found that Chinese opinions to the Ordinance No.4 of 1845 are unobtainable. Although it was mainly the Chinese way of life restricted by the said Ordinance, Europeans rather than the Chinese residents of Hong Kong harshly criticized the law. Or, more precisely, there is no extant record available of the local Chinese views of the Ordinance. The disparity of opinions as between the European and Chinese communities in Hong Kong impeded a complete picture of the role of law in society. The huge gap between the Chinese community and the colonial government in the early colonial years also makes the investigation of the interactions between transplanted law and local society very difficult.

After a historical survey on relevant materials, the following cases/topics have been carefully selected: the controlling of Chinese body via the contagious diseases ordinances, the restriction of Chinese space through buildings ordinances, and the exclusion of Chinese medicine by Tung Wah's westernisation and various medical laws.⁴⁶ Each case has abundant

⁴⁶ The Tung Wah Hospital was established in 1870 to meet and accommodate the then indigenous Chinese strong fears and prejudices against western medicine. Once it came into being, the Hospital soon developed into an omnipotent eleemosynary institution looking after Chinese welfare and became one of the most prestigious Chinese voluntary associations in Hong Kong history. Due to its important social position within the Colony, and given its significant role in Hong Kong's history, this study will necessarily discuss and analyse the Tung Wah's role in legal transplanting in some detail from time to time but particularly in the cases of the plague and medical controls in Chapters 4 and 6. Studies both in English and Chinese have carried out on the Tung Wah's medical, social and political significance in making Hong Kong's history. Suffice it to point out here that key writings on the Tung Wah include: Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*, Hong Kong: Hong Kong Univ. Press, 2003, pp.30-49; Xiangying Yang, 'Zhimin quanli yu yiliao kongjian: xianggang donghua sanyuan zhongxiyi fuwu bianqian (1894-1941)' ('Colonial Power and Medical Space: The Transformation of Chinese and Western Medical Services in the Tung Wah Group of Hospitals, 1894-1941') Ph.D. diss., Department of History, Chinese University of Hong Kong, 2007;

materials available to construct a relatively complete picture of the role of law in society. The materials of official records, newspapers, petitions, archives from Chinese voluntary associations and some contemporary writers' observations enable this study to investigate a specific ordinance from its introduction to application, from legal text to the actual legal effect upon Chinese society. Each case also has relatively balanced views from both sides of European colonists and Chinese subjects, so that readers can be informed from different perspectives on the conflicts surrounding specific laws, thus correcting a common problem in the literature in which the history recounted is merely the history of the colonial rulers.

'Readability' is another important criteria in selecting cases in the sense that the role of law in society is far more distinguishable in a time of crisis than in day-to-day legal practice, and so cases which are 'very readable' in the sense that they offer invaluable and fascinating analysis of unfolding crises are important. The problem of 'the plague' and of plague control for instance insightfully offers much dramatic plot. Many of the hidden tensions between European colonists and Chinese subjects turned white-hot when there was a public health crisis over 'the plague'. The outbreak of the plague effectively ended the colonists' tolerance of Chinese filthy and over-crowding dwellings, Chinese 'backward' and 'dangerous' traditional medicine, and brought private property rights and public health interests, western medicine and Chinese medicine into direct confrontations. Thus, the case of plague and its control in nineteenth century Hong Kong tells us that indeed the role of law in society is far more distinguishable in the time of crisis than in day-to-day legal practice. It is for this reason that the whole of Chapter 4 is devoted to account for the outbreak of the plague: how the law was triggered, how the Chinese residents of Hong Kong resisted the western approach of plague control, and how Chinese ways had to give way to the latter under colonial powers.

3.2 Archival method

As already indicated, in this thesis much of the study is based on archival research. Such archival research is not just a window onto the past; it also helps us see our present methodological quandaries and social problems from thoughtful, constructive, and proven prospects.⁴⁷ Archival materials include letters, diaries, confidential memos, lecture notes, transcripts, rough drafts, unpublished manuscripts, and other personal and organizational

Henry James Lethbridge, 'A Chinese Association in Hong Kong: The Tung Wah', *Asian Studies*, 10, 1973, pp. 144-158; Carl T. Smith, 'Notes on Tung Wah Hospital, Hong Kong', in 16 *J. of the Royal Asiatic Society Hong Kong Branch*, 1976, pp.263-280; Puiyin Ho, Po yu Li: *Donghua sanyuan zhidu de yanbian (Deconstruction and Reconstruction: the development of the Tung Wah Three Hospitals)*, Vol.4, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2010.

⁴⁷ Michael R Hill, *Archival strategies and techniques*, Newbury Park; London Sage Publications, 1993, p.1.

records.⁴⁸ Although literature written directly on this current topic is rare, indirect materials relevant to the topic are abundant. Without a careful plan, archival research might therefore occupy endless time. In order to improve the efficiency of the archival research, this study groups the related materials into three categories, viz. official records, early newspapers, and Chinese archives.

Official records provide socio-historical backgrounds for the introduction, amendment and abolition of particular ordinance from a top-down perspective. Official records include original ordinances, Hong Kong and British Hansard, correspondence between the colonial government and the Colonial Office, medical and sanitary reports, and some important committee reports. The majority of the official records of this study are held in the National Archives, Kew, London. Many of the materials have been digitized and can be downloaded from the database of 'Hong Kong Government Reports from 1841 to 1941' in the very important Hong Kong University website: <http://sunzi.lib.hku.hk/ER/detail/hkul/2128681>.

Newspapers offer a precious European perspective in observing the role of law in Hong Kong. The majority of Hong Kong's early newspapers were in English and the articles were often contributed by European writers.⁴⁹ Compared with Chinese subjects, Europeans were more outspoken and critical of Hong Kong's laws and governmental policies. Their political position was more secure, and for the most Hong Kong's official language, English, was their mother tongue. Thus, for instance, Hong Kong's first sanitary law, viz. the Good Order and Cleanliness Ordinance No.5 of 1844 was scorned as being little more than a 'bamboo ordinance', since one particular clause in the said Ordinance prohibited Chinese watchmen from striking bamboos or gongs during the night time for the sake of 'good public order'.⁵⁰ The colonial government and its Legislative Council were criticised by the European community for spending much time discussing the 'bamboo clause', while much more important public health issues were overlooked.⁵¹ As will be seen in the core chapters of this study, many European opinions and comments on specific public health ordinances necessarily come from contemporary newspaper reports.

Chinese-language archives deployed by this study are mainly preserved in two

⁴⁸ Ibid. p. 4.

⁴⁹ Hong Kong's early English newspapers visited by this study include *Friend of China & Hong Kong Gazette* (1842-1861), *The Hong Kong Register* (1844-1858), *China Mail* (1845-1920), *Hong Kong Daily Press* (1864-1941), *Hong Kong Telegraph* (1881-1941), *South China Morning Post* (1903-1988), and a Canton newspaper *Chinese Repository* (1833-1851).

⁵⁰ It was said that when Sir Henry Pottinger (Hong Kong Governor, 1843-1844) and Major D'Aguilar arrived in the colony of Hong Kong, they were greatly annoyed by the sounds of Chinese watchmen and were unable to sleep soundly at night. For details of this interesting 'bamboo clause', see Sheilah E. Hamilton, *Watching Over Hong Kong: Private Policing 1841-1941*, Hong Kong University Press, 2008, pp.20-26.

⁵¹ Mr. Caster's letter to the editor, *Hong Kong Register*, 17th September 1844, p.159.

prominent Chinese associations of the Tung Wah Group of Hospitals and the Po Leung Kuk.⁵² As mentioned above that Chinese residents of Hong Kong were reluctant to openly comment policies and laws in newspapers.⁵³ Thus the records preserved by Chinese associations in Hong Kong are of particular values in assessing Chinese attitudes towards colonial laws and policies.⁵⁴ For instance, Chinese objections to what was seen among local Chinese residents as Tung Wah's 'westernisation' are vividly recorded in the Chinese-language minutes of meetings of the Tung Wah Hospital (held in Chinese). Without these Chinese archives, we would not be able to secure a balanced view of the colonial government's policy in relation to the Tung Wah and issues such as its 'westernisation'.

Based upon materials uncovered in the above archives, this study is able to investigate Hong Kong's early public health laws from different perspectives. While archival based research adds originality and authenticity, it also creates a degree of uncertainty. Since the outcomes of research cannot be simply predicted or neatly packaged into methodological formulae that guarantee publishable results. As Michael Hill points out, 'in archival work, what you find determines what you can analyze, and what you analyze structures what you

⁵² Each of the two associations has its own archival museum or office. The Tung Wah Hospital opened its branch hospitals of the Kwong Wah Hospital (广华医院) and Tung Wah Eastern Hospital (东华医院) in 1911 and 1929 respectively. In 1931, the three hospitals were amalgamated into the 'Tung Wah Group of Hospitals'. For a brief review of the Tung Wah's history and its contemporary services, see <http://www.tungwah.org.hk/>. The Po Leung Kuk (Baoliangju, 保良局, literally, the protection of the young and innocent) was another prominent Chinese association. It was established by Hong Kong's Chinese elite in 1878. The Kuk was established for suppressing kidnapping and trafficking in human beings, especially young girls. The Tung Wah and the Kuk had close connections. Some of the founding directors of the Po Leung Kuk were also the Directors of the Tung Wah Hospital. See The Founding of Po Leung Kuk, in the Po Leung Kuk's website: <http://www.poleungkuk.org.hk>. Both the Tung Wah and the Po Leung Kuk remain vibrant institutions in Hong Kong, even today.

⁵³ *Huazi Ribao* 《华字日报》 (1863-1940) and *Xunhuan Ribao* 《循环日报》 (1874-1883) are two of the earliest Chinese newspapers in Hong Kong. The first copy of *Huazi Ribao* was issued in 1863, but its available copies are from 1895 to 1940 in the library of Hong Kong University. On a the basis of a light-touch survey of these Chinese newspapers, this study finds that most articles are about events in mainland China instead of in Hong Kong. The neglect by Hong Kong Chinese of local events partly reveals Chinese indifferent attitudes towards colonial politics which in turn reflects the alienating effect of colonial regime to its Chinese subjects.

⁵⁴ For a detailed introduction of Tung Wah's archives please read Sinn, Elizabeth 'Materials for Historical Research: Source Materials on the Tung Wah Hospital 1869-1941—the Case of a Historical Institution,' in Alan Birch et al., ed., *Research Materials for Hong Kong Studies, Hong Kong: Centre of Asian Studies*, Univ. of Hong Kong, 1984, pp.195-223. The majority of Tung Wah's Chinese archives between 1873-1894 were unfortunately destroyed by fire in the 1894 plague as required by the then sanitary officer. For an introduction of the Po Leung Kuk's archives please read *Xianggang Baoliangju shilüe bianji xiaozu weiyuanhui, Xianggang Baoliangju Shilüe : Chuang Ju 90 Zhounian*, Xianggang: Baoliangju, 1968.

look for in archival collections.’⁵⁵ Therefore, we should always bear in mind the limits of archival based method and keep open to the findings and deductions of the research.

3.3 Locating the old ordinances

As this study investigates the process of transplanting British public health laws to colonial Hong Kong, the starting point of such research will have to be specific ordinances per se. So it is important to find the original version of the ordinances correctly and efficiently. There are three possible sources to locate the old ordinances of colonial Hong Kong. First in the series of CO130 which contained ordinances passed by the government of Hong Kong from 1844 to 1965. Consulting CO130 might be the quickest way to retrieve the original version of ordinances provided that the researcher lives near to the National Archives at Kew, London, where the CO (Colonial Office) series documents are preserved.

Second are the editions prepared under Law Revision Ordinances in different periods. Throughout Hong Kong’s colonial history up to 1 July 1997, Hong Kong government issued nine editions of *Laws of Hong Kong*. The 1890, 1901, 1912, 1923, 1937, 1950 and 1964 editions have been digitalized by Hong Kong University (HKU) and can be accessed through the following database: <http://xml.lib.hku.hk/gsdldb/oelawhk/browse.shtml>. However, as the basic function of legal revision is to provide up to date ordinances for contemporary society, so the editions of *Laws of Hong Kong* do not contained the original version of ordinances, unless the ordinance had never been revised. Nevertheless, these editions contain useful information on the evolving history of each ordinance. On the margin to each amended provision, the title of that amendment ordinance was written. If one wanted to know more about that amendment, according to the title of amendment ordinance provided, one can quickly trace the legislative records of that particular amendment ordinance in *Hong Kong Hansard (HKH)*. Besides, the up to date catalogue of Hong Kong ordinances contained in the editions of the *Laws of Hong Kong* offers a comprehensive list of Hong Kong ordinances in a chronological sequence. Assisted by the catalogue in the 1950 edition *Laws of Hong Kong* that the Appendix 6 ‘Hong Kong Medical and Sanitary Laws 1844-1941’ to this dissertation is able to be prepared within a relatively short period.

The third place to look for the original legal text of Hong Kong’s early ordinances is the *Hong Kong Government Gazette (HKGG)*, supplemented by some early English newspapers. For the following reasons, I would say that *HKGG* was the best place to look for original ordinances. First, owing to its digitalised format in HKU library database of ‘Hong Kong Government Reports online, 1842-1941’, the majority of *HKGG* published

⁵⁵ Hill, *Archival strategies and techniques*, p.16.

between 1842 and 1941 can be retrieved from <http://sunzi.lib.hku.hk/hkgro/browse.jsp>.⁵⁶ Secondly, *HKGG* published not only the passed ordinances but also the draft bills of the proposed ordinances. As we will see in this dissertation, for a historical research on public health legal transplantation and legislation, having both the versions of bill and ordinance in hand is of crucial importance. By comparing the provisions in the draft bills and the final version of ordinances, we can have a clearer idea of the legislative process of that particular ordinance. Without the original text of draft bills, it would be very difficult to grasp the key points of the debates recorded in *HKH*. Thirdly, the database of 'Hong Kong Government Reports online, 1842-1941' provides a useful search engine which greatly facilitates research in many aspects.⁵⁷

However, as mentioned above, the online government gazette in the HKU database is not always complete in the period indicated (1842-1941), for instance the years 1949-1952 inclusive are not included. Moreover, some gazettes owing to technological problems have been damaged and could not be opened after downloading, such as *HKGG*, 7 November 1902, which contained the second draft Bill of the proposed Public Health and Buildings Ordinance. Under such circumstances, one has to go back to the printed copies of the *HKGG* archives. There are two places preserving the archives of *HKGG*. One is the Public Record Office in Kwun Tong, Kowloon Peninsular, Hong Kong. The other is the CO132 series (1846-1990) held in the National Archives, London.

3.4 A mini-case study

In search of proper topics, this research encounters some interesting materials based upon which some mini-case studies can be carried out. The stories constructed are not complicated enough for a complete chapter but also revealing and closely related to current thesis, for instance, the in-house pig-raising problem.

The Order and Cleanliness Ordinance No.9 of 1867 prescribed that the keeping of pigs or of other animals within the City of Victoria required a special license to be obtained from the Registrar General and not be injurious to the public health.⁵⁸ Otherwise the owner of the

⁵⁶ This database provides online access to pre-World War II issues of four major government publications: Administrative Report (1879-1939, with gaps), Hong Kong Sessional Papers (*SP*, 1884-1940), Hong Kong Hansard (*HKH*, 1890-1941) and Hong Kong Government Gazette (*HKGG*, 1842-1941, the years of 1849-1852 are wanting).

⁵⁷ The searching function provided by the said database is however not perfect. For instance, the *HKGG* in the 1840s are all in image format, thus are unsearchable. Compared with the database of 'The Times Digital Archive, 1785-1985' launched by the British Library, much can be improved by HKU's digital archives in terms of searching function.

⁵⁸ The City of Victoria was one of the first urban settlements in Hong Kong after the island became a British colony in 1842. It was deemed to be the capital of Hong Kong from 1842 until the 1997 handover. Almost all the headquarters of government departments and financial

animal would be liable to a fine or be imprisoned.⁵⁹ During his first series of inspections, Dr. Ayers (Colonial Surgeon, 1873-1897) discovered that pigs were kept in houses all over the town, by the hundreds. In one house of a normal size, 170 pigs were seen kept. In the same house lived more than 40 people.⁶⁰ Pigsties were to be found under the beds and in the kitchens of first, second and third floors. The upper floors were usually constructed of thin boards, with wide interstices between them. As a result, the under floor residents were very often living in an environment of pigs' dropping and urine, etc. This awful scene astonished the government inspectors. Despite the fact that many pigs were kept under the licence, immediate actions were taken place, as the licences required the owners to raise the pigs in proper places, and not under the beds! All the pigs kept in this cavalier manner were confiscated, and on repetition of the offence, the owner was fined as well.⁶¹

However, in China, raising pig was a main income for many household, especially for poor Chinese families, so that their lives might be entirely relying upon the rearing of pigs. That is why, despite the inconvenience brought by keeping pigs in a crowded house, the Chinese were still to raise as many as they could. But now, under the sanitary laws, all the pigs discovered in the houses were confiscated. If the owners dared to keep pigs again, they would be further fined or put into prison for fourteen days.⁶² Indeed, many pigs were licensed under the then colonial regulations. In order to get that license, the poor Chinese had already paid a certain amount of money in fees.⁶³ Without using any more words, we can imagine the desperate mood of the owners when their pigs were forfeited.

In the first few decades of British rule, the local Chinese in Hong Kong just kept their silence. But with the passage of time, there was something different that took place. In the

institutions are located within this city. See Joseph S.P. Ting, *City of Victoria: a selection of the Museum's historical photographs*, Hong Kong: Urban Council, 1994.

⁵⁹ The Registrar General was established under the Registration and Census Ordinance 1844, as an officer supposed to know well Chinese language and to protect the interests of Chinese residents in Hong Kong, yet was often occupied by officials knowing nothing of Chinese. The situation did not improve until the introduction of the cadet scheme in the early of 1860s under which certain number of colonial officers received education in Chinese language and Chinese culture. See H.J. Lethbridge, 'Hong Kong Cadets, 1862-1941', in 10 *Journal of the Royal Asiatic Society Hong Kong Branch*, 1970, pp.36-56. After the introduction of the cadets scheme, the Registrar General was often appreciated by Chinese residents in Hong Kong for his understanding and sympathetic attitudes of Chinese social norms and customs. As will be seen in the core Chapters of the dissertation below, the Registrar General also played an important role bettering the communication between the Chinese community and the colonial government thus made the co-operation between two alien communities possible. In 1913, the title of the Registrar General was formally changed into the Secretariat for Chinese Affairs and this helped to make this office more accessible to members of the Chinese community in Hong Kong.

⁶⁰ *Colonial Surgeon's Report for 1880*.

⁶¹ *Original Annual Report of Colonial Surgeon for 1874*

⁶² For the detailed information, see Ordinance No. 9 of 1867, Section 10.

⁶³ The fee of applying a pig license varied according to the numbers of pigs.

1870s, a well-off and educated Chinese class emerged. This group of Chinese leaders was willing to support poorer Chinese in Hong Kong to communicate or negotiate with the colonial government.

Four months later after the Colonial Surgeon's disclosure of the pigs' nuisance in his report,⁶⁴ some educated Chinese applied to the Department of Registrar General Office for a suitable locale in which to raise pigs. At first, the Colonial Surgeon insisted not to sanction any place for keeping pigs in the town of Victoria. The Registrar-General, who generally had a sympathetic view over Chinese community, was inclined to grant the pig-sites. After some subtle negotiations, two Lots were finally granted to the local Chinese residents of Hong Kong for the purposes of raising pigs, on the condition that the two sites were paved and sufficiently drained and free from filth and smell.⁶⁵ Several years later, even the Colonial Surgeon himself acknowledged the socio-economic necessity of setting up more pig-sites in the Island,

It would also be a great boon to the poorer classes of the Chinese, if the Government could provide small patches of leveled ground in different parts of the suburbs of Victoria, on which they might be allowed to build pig-sites, on condition of their being kept clean and in good order. This I think might be accomplished, and the advantage to the poorer class, who depend entirely on the keeping of pigs for their living, would be very great.⁶⁶

As we can see that the tensions under the Order and Cleanliness Ordinance were soothed out when the 'proper place' to raise pigs under the pig licensing system was created and redefined. Without Chinese elite's explanation and the willing ear of the Registrar-General, the said law might continue put sanitary inspectors and Chinese community under constant tensions.

By putting the ordinance in concrete historical settings and studying the controversial issue from both European and Chinese perspectives, the limits of the law can be better observed. For instance, in this case if only seen from European perspective, the habit of in-house pig-raising might further confirm European's impression of 'barbarian' and 'filthy' Chinese whose lives disregarding any public health principles and who did not even mind

⁶⁴ *Report of the Colonial Surgeon on His Inspection of the Town of Victoria, and on the Pig Licensing System*, from Colonial Surgeon, Dr. Ayres, to Hon. J. G. Austin, Colonial Secretary, Hongkong, 15 April 1874.

⁶⁵ During the communication between the Registrar General and the Survey General, there arose an interesting episode. In his response, the Survey General bitterly pointed out that it was not suitable for his Office to inspect the nuisances while the Department of Registrar General to issue and grant pig licenses. Apparently, the Inspectors' job was hated by the Chinese community, while the Registrar General continued to play a role of 'good person' during the public health development. At the end, the Governor, Sir A E. Kennedy agreed that the duty of Inspectors of Nuisances was ill-defined and required reconsideration. See the Enclosures in the *Sanitary Reports (Hong Kong)* laid before the Legislative Council, 1879.

⁶⁶ Colonial Surgeon's Annual Report for the year 1877, written by Dr. Ayres, dated 10 May 1878.

living under pigs' urine. If seen only from the local Chinese perspective, however, the same law and officers must have appeared 'ruthless' and 'oppressive' to the Chinese subjects of Kong Kong. This was because the Chinese residents were regulated primarily in terms of public health principles, disregarding their stringent living conditions and vital household income.

Communication matters. Mutual understanding is of vital importance during legal transplantation and localisation process. In this case, communication achieved happy endings. But in many other cases, things are much more complicated. In the case study of medical control, for example, Chinese medicine, despite its popularity among local Chinese, never obtained legal status under colonial medical laws.⁶⁷ In the case of contagious diseases control, for another example, with Chinese efficient cooperation, the 'evil' sides of the Contagious Diseases Ordinance, 1867 had been minimized. Yet pressed by the British Parliament, laws on contagious diseases control were fully repealed in colonial Hong Kong. Normally, the colonial issues would not be intervened in by the British Government. Why in the case of contagious diseases control, did the British public take an active role and finally changed the effect of Chinese co-operation? These enquiries not only require a methodological rigor including in-depth case studies, but also a serious engagement with theory. By investigating the issues from both Chinese and European perspectives, the current thesis wishes to carry out the four major case studies in the following core chapters both rigorously and objectively.

4. Structure of the dissertation

There are altogether seven chapters for the dissertation. Chapters 1-2 are the introductions. Chapter 1 includes thesis, theories, methodologies and structure. Chapter 2 of 'The Hong Kong Setting' is a contextualization chapter which sets the historical scene of Hong Kong and its unfolding public health system for the whole dissertation. Chapter 2 first investigates and compares Hong Kong's earliest public health conditions before and after its being a colony, then provides a brief outline of Hong Kong's public health development

⁶⁷ Throughout Hong Kong's colonial history (1843-1997), Chinese medicine remained an extra-legal status, sometimes prohibited by the law, sometimes 'tolerated' by the law as customary practices, a phenomenon would be discussed in details in Chapter 6. It was not until the resumption of sovereignty by China in 1997 that Chinese medicine's legal status was assured. Article 138 of the Basic Law prescribes that 'the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies to develop western and traditional Chinese medicine and to improve medical and health services. Community organizations and individuals may provide various medical and health services in accordance with law.' Since the passage of the Chinese Medicine Ordinance 1999, Chinese medicine had an equal legal status as western medicine in Hong Kong. For a brief history of Hong Kong's Chinese medicine and its latest development, please visit the official website of the Chinese Medicine Council of Hong Kong: <http://www.cmchk.org.hk/>.

under the period of review, viz., from the 1840s to the late 1930s. Furnished by these social-historical knowledge, we can better understand the rationale of colonial legislation on public health.

Chapters 3 to 6 are the core of the dissertation. These four core chapters investigate and analyse the complicated interactions between transplanted law and Chinese sanitary and medical customs. Guided by the general question of ‘how the transplanted public health law impacted Chinese sanitary and medical customs’, four dimensions of Hong Kong’s public health system are highlighted, namely ‘the body’, ‘plague’, ‘space’ and ‘medicine’. Each dimension has one or two in-depth case studies.

For examining issues of the ‘Body’, Chapter 3 selects Hong Kong’s contagious diseases legislation for in-depth analysis. This legislation aimed to control the venereal diseases by controlling bodies (those of Chinese prostitutes in particular) but also raised moral issues which were closely connected with Chinese traditional social institutions such as concubinage and mui tsai systems.⁶⁸ Supported by the colony’s Chinese community, the Hong Kong Contagious Diseases Ordinance outlived British Contagious Diseases Acts by some five decades. The final abolition of the colony’s contagious diseases legislation signifies the triumph of liberalism over Chinese patriarchal tradition in colonial Hong Kong. Yet the disastrous social effect of such abolition indicates, as Chapter 3 shows, the very considerable complexities involved in the processes of legal transplantation.

For the issues of ‘Space’, two topics are investigated and elaborated: the plague and building controls. Insanitary Chinese buildings were seen as one major threat to Hong Kong’s public health. The colonial government introduced various ordinances to regulate Chinese living space. Resisted by Chinese community for social, cultural and economic reasons, the laws had largely remained a dead letter till the outbreak of bubonic plague in 1894. The plague triggered the law and pushed the colonial government took dramatic

⁶⁸ The term ‘mui tsai’ (妹仔, *meizai* in Mandarin or Putonghu, literally ‘little girl’), in its restricted sense, would be generally understood to refer to a girl who has been transferred from her own family to another family with the intention that she shall be used as a domestic servant, not in receipt of regular wages and not at liberty to leave her employer’s family of her own free will or at the will of her parent. The reasons for the transfer of girls as mui tsai were mainly due to the poverty and lower status of girls in the Chinese social structure. According to Chinese custom, the employer of a mui tsai should provide her with board, lodging, clothing, and such medical attention as was available. Chinese custom had always regarded a mui tsai as a member of the family which a paid domestic servant is not. It was always implied that when the mui tsai reached marriageable age, she should be married to a suitable husband. Thus many Hong Kong Chinese, especially the mui tsai employers, considered the Mui Tsai system very useful to help the poor girls. Po Leung Kuk held the same opinion. Indeed, most of the Po Leung Kuk leaders were also mui tsai employers. Hong Kong Mui Tsai Committee, *Mui Tsai in Hong Kong and Malaya: Report of Commission*, London: His Majesty’s Stationery Office, 1937. In reality, due to the lower status of mui tsai they could easily be abused by employers. From an English point of view, mui tsai was no different from child slavery.

measures against Chinese insanitary houses. Actually, the plague was a turning point in Hong Kong's public health history. Due to its importance, Chapter 4 describes and discusses the plague in great details.

As a response to the plague, the Public Health and Buildings Ordinance 1903 (Ordinance No.1 of 1903) was introduced. This Ordinance still assumed Chinese residents to be the main source of nuisance and therefore included many building provisions for a better control of Chinese houses. Chapter 5 pays close attention to the said Ordinance and its subsequent social impact. This chapter finds that instead of improving house sanitation, the said law fostered bribes and many irregularities in administration. By investigating the interactions between the said Ordinance and Chinese community, by exploring broader socio-economic factors behind the said law, Chapter 5 obtains some enlightened views for better legislation and administration of public health. The 1935 public health reforms laid the foundation of a modern professional and humanitarian public health system for Hong Kong.

The third part of the dissertation looks at issues of 'medicine' -- another controversial area of Hong Kong's public health development. Two aspects concerning the issues of 'medicine' are investigated, namely colonial controls on Chinese style hospitals and Chinese medicine. Based upon archival materials, Chapter 6 first traces the westernisation process of the Tung Wah Hospital, a hospital which only applied Chinese medicine since its inception of 1870, but under close supervision of the colonial medical authorities gradually transformed into a pure western style hospital.

Through a socio-medical perspective, Chapter 6 also examines the legal status of Chinese medicine under Hong Kong's normative public health framework. By putting specific medical laws against concrete socio-historical backdrop, Chapter 6 highlights the prejudicial and exclusive effect exerted by the transplanted medical laws upon local Chinese medicine. As will be seen in Chapter 6, despite Chinese consistent protests and objections, Chinese medicine remained extra-legal in status throughout Hong Kong's colonial history.

The 'Body', 'Space' and 'Medicine' are not discrete but closely interconnected parts of Hong Kong's public health system. These three dimensions provide us with a solid stage to observe the complicated relations between transplanted laws and local Chinese customs. At the end of each chapter, a small conclusion concerning the legal impact upon Chinese sanitary and medical customs will be made.

Chapter 7 offers concluding thoughts. In this chapter, informed by relevant theories, the role of law in social transformation is discussed in detail not only in the colonial context but also against a broader comparative and international background.

Chapter Two

The Hong Kong Setting

In accounts of Hong Kong's origins, there is a myth that Hong Kong grew out of a 'rocky and barren' island. Typical in this vein is the following description of the colonial development of Hong Kong:

Before the cession, the native population on the island amounted to no more than two thousand—and these chiefly a set of low, poor, and degraded quarrymen, smugglers, fishermen, or pirates. But since 'the colony of Hongkong' was opened, there has been an immense accession of Chinese immigrants, whose numbers, by the last census, exceed 60,000.¹

Europe in China, by the German writer E.J. Eitel, is an indispensable source for many historians of early Hong Kong. It tells a similar story of the infant colony:

previous to the British occupation of Hongkong, the population of it probably never exceeded, at any one time, a total of 2,000 people, including Puntis, Hakkas and Hoklos, whether ashore or afloat.²

J.W. Norton-Kyshe's two large volumes emphasised the tremendous difficulties the British colonial government had in bringing good governance to a population 'recruited almost from the dregs of the society and a Chinese people ... totally ignorant and indifferent as to Western ideas or modes of government'.³ Both Eitel's and Norton-Kyshe's works have influenced subsequent work on Hong Kong's history, including that of British historians.⁴ Every new edition or citation of these early colonial historiographies solidifies the myth propagated by these early works. The myth itself becomes a fundamental and unquestioned starting point for research into Hong Kong's history.

The present research began with the intention of using these histories of early colonial Hong Kong as a starting point. Yet it became clear that the myth with Britain's central, pioneering role in Hong Kong's growth weighed quite heavily on the history of public health in colonial Hong Kong. Indeed, even contemporary practitioners of public health and law in Hong Kong share this belief that Hong Kong emerged from a barren and pestilential island to

¹ William Charles Milne, *Life in China*, London: Warnes & Routledge, 1861, p. 440.

² E.J. Eitel, *Europe in China*, Hong Kong: Oxford University Press, 1983, p. 134.

³ J.W. Norton-Kyshe, *The history of the laws and courts of Hong Kong from the earliest period to 1898*, Hong Kong: Vetch and Lee Limited, 1971 [1898], p. vii.

⁴ Yuen kwok Keung, 'The writing of competing histories of Hong Kong, with special reference to the perspectives from Britain, mainland China and Hong Kong', unpublished PhD dissertation, University of Hong Kong, 2003, p. 18.

become an orderly and healthy cosmopolis as a result of British colonial policy.⁵ The transformation of the unhealthy Hong Kong to one of the healthiest places in the world, in these 'English' narratives, was a saga of overcoming disease and fear through western medical science and a 'modern' legal framework.⁶

During this transformation process, however, Chinese contributions to Hong Kong's stability and prosperity are often neglected.⁷ As mention in Chapter 1, the current research approaches Hong Kong's public health law from both western and Chinese perspectives so as to render a relatively balanced account for the role of law in social transformation in the case of Hong Kong's public health development.

This chapter comprises four sections. The first two sections investigate Hong Kong's earliest public health conditions and problems before and after its being a British colony. As will be seen in Section 1, Hong Kong, an island of peace soon obtained a notorious fame of a filthy and pestilential island after its being a colony. The stark contrast between the two reputations of Hong Kong has significance in its challenging the linear characteristic of imperial rationalism.⁸ This study shows however that the Hong Kong's public health was not developed from a 'barren and rocky' island but an island inhabited by friendly and civilized Chinese. The dramatic environmental change of Hong Kong Island before and after the British occupation possibly caused the formidable 'Hong Kong Fever' (later identified as malaria).⁹ As will be seen in Section 2, the formidable diseases put the colonial rulers and Chinese inhabitants into direct confrontation. Section 3 investigates how the colonizer's perception of 'dirty' and 'dangerous' Chinese led intrusive public health legislation. The final Section provides a brief outline of Hong Kong's public health development under the main period of review, viz., from the 1840s to the late 1930s.

⁵ Yuan-ha Law, '1842 nian zhi 1937 nian jian zhengfu yiliao zhengce yu xi yi tizhi zai xianggang de fazhan.' (Western Medical System in Hong Kong, 1842-1937) M.Phil. diss., Department of History, Hong Kong Baptist University, 2003; Frena Bloomfield, *Urban Council, 1883-1983*, Hong Kong: Urban Council, 1983.

⁶ Faith C. S. Ho, 'History of Infectious Diseases in Hong Kong: A Story of Discovery and Challenge', in A. Starling et al. ed., *Plague, SARS and the Story of Medicine in Hong Kong*. Hong Kong: Hong Kong University Press, 2006, pp.17-73.

⁷ Leo F. Goodstadt, *Uneasy Partners: The Conflict between Public Interest and Private Profit in Hong Kong*, Hong Kong: Hong Kong University Press, 2009, Chapters 1-3 in particular.

⁸ Imperial discourse always emphasises the progress and triumph of the colonizers' effort and doing so by comparing miserable and insignificant pasts with a glorious and progressive present under British rule. See Kwok-keung Yuen, 'The Writing of Competing Histories of Hong Kong, with Special Reference to the Perspectives from Britain, Mainland China and Hong Kong', Ph.D. diss., Department of History, University of Waikato, 2003, p. 22.

⁹ 'Hong Kong fever' later proved to be malaria, and the fatal cases were most likely due to the malignant tertian type. See G.H.Choa, *The life and times of Sir Kai Ho Kai*, Hong Kong: The Chinese University Press, 2000, p. 80.

1. One island, two reputations

Hong Kong became a British Crown Colony in 1843. The island was first occupied by British traders in 1838-1839, was ceded by the viceroy of Canton on 19 January 1841 and confirmed to have been ceded by the Treaty of Nanking on 29 August 1842. The island and its dependencies were created as 'the Colony of Hong-kong' by Royal Letters Patent, bearing the date 5 April 5 1843. The peninsula of Kowloon on the mainland opposite Hong Kong was ceded by the ratification of the Treaty of Peiking, in 1860. The New Territory was obtained through a leasehold of 99 years, beginning in 1898.

Before British troops occupied the colony in 1841, Hong Kong was described as a 'clean', 'friendly', and to some extent 'romantic place' in both Chinese and western narratives.¹⁰ Not long after British troops occupied Hong Kong in 1841, the same island gained notoriety as a 'pestilential place' and a 'grave yard' for European colonists.¹¹ As will be examined in this section, Hong Kong fell into this disrepute after the 'Hong Kong fever' had ravaged the European population in the colony, especially those serving in the British military forces.

1.1 Hong Kong, a charming and romantic island

We can imagine that one and a half centuries ago, when the natural beauty of Victoria Harbour and its surroundings had not yet been tainted by industrial pollution and urban sprawl, the landscape of Hong Kong would have been quite attractive. The works of English artists from that time present an image of Hong Kong as not only a picturesque and romantic landscape but also a place where a local community lived happily and peacefully. 'The Waterfall at Hong Kong, 1816' is one such early representation. The engraver of the coloured mezzotint, T. Fielding (1793-1837), was held in high esteem by his contemporary Clark Abel for the strict fidelity executed in his work.¹²

¹⁰ James Orange, *The Chater collection pictures relating to China, Hongkong, Macao, 1655-1860*, London: Butterworth, 1924, pp. 338-343.

¹¹ W. D. Bernard, *Narrative of the voyages and services of the Nemesis, from 1840 to 1843 and of the combined naval and military operations in China: comprising a complete account of the colony of Hong Kong, and remarks on the characters and habits of the Chinese*, London: Colburn, 1844, pp.63-65; John Wilson, *Medical notes on China*, [Imprint] London :J. Churchill, 1846, p.133-135.

¹² Abel wrote: 'In conclusion, I must not forget to point out the fidelity with which the engraver. Mr. Fielding, has executed his department of the work or to acknowledge the interest he took in the progress of it, and his anxiety that the accuracy of his pencil should correspond with the nicety of my own wishes in subjects not so frequently under the eye of an artist.' Quoted in Oragne, *The Chater Collection*, p. 348.

Figure 2.1: 'The Waterfall at Hong Kong, 1816'



No. 2. Waterfall, Hongkong. 1816. Coloured mezzotint.

T. Fielding

Abel recalled the landscape portrayed in this mezzotint in his book *Lord Amherst's embassy*:

A charming view of the waterfall at Waterfall Bay, Hongkong Island...As seen from the ship, this island was chiefly remarkable for its high conical mountains, rising in the centre, and for a beautiful cascade, which rolled over a fine blue rock into the sea.¹³

Thomas Allom's celebrated *View of China*, also paid tribute to the natural beauties of the island:

Few areas so limited include so many scenes of sylvan beauty as the sunny island of Hong Kong. The country immediately behind Queentown [sic] is peculiarly rich in romantic little glens, or in level tracts, adorned with masses of rock, in the fissures of which the noblest forest-trees have found sufficient soil for their support.¹⁴

Returning to the mezzotint, Fielding's vision obliged him not only to represent the natural scenes but also the activities of inhabitants whom he encountered. Looking closely at the painting reveals several huts or houses scattered on the hillside. Near the seashore stand four fishermen: one is fishing with a net while the other three are standing aside. They might be waiting to give a hand when necessary, or perhaps they are simply attracted by the

¹³ Note above.

¹⁴ Wright and Allom, *China illustrated in a series of views*, vol. 1, pp. 17, 33: 'Bamboo aqueduct at Hong Kong'. Quoted in James Hayes, *Hong Kong island before 1841*, in *24 Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1984, p.113.

approaching boat, wondering who the people are in strange clothes.

The indigenous presence in the picture indicates that in 1816, more than two decades before the island was ceded to the British, there was already a flourishing indigenous population. Indeed, as early as 1793, a report on Hong Kong quoted in a guide to navigation on the South China coast had already drawn attention to native life on the island:

You will be supplied here with almost every kind of refreshment; especially fish, hogs, beef and poultry. We found the inhabitants very civil and were daily on shoar [sic] at the Villages, and fowling in the interior parts of the Island.¹⁵

There are also Chinese accounts of the original occupants of Hong Kong before 1841. Chinese historians such as Lo Hsiang Ling (Luo Xiang Lin, 罗香林), Jao Tsung-i (Rao Zong Yi, 饶宗颐), Siu Kwok-kin (Xiao Guo Jian 萧国健) and Lin Tian Wei (林天蔚) have painstakingly researched the pre-1841 history of Hong Kong.¹⁶ Their findings are mainly based upon the series *Gazetter of San On district* (新安县志) and several family genealogies.¹⁷ Xin'an (新安), variously romanized as San On, Sin Ngan and Hsin-an, was the county to which Hong Kong Island belonged in 1841.¹⁸

These Chinese narratives indicate that Xin'an had been a wealthy region. The Qing dynasty's evacuation policy of 1662, however, caused the whole area of Hong Kong to be abandoned, including the island, Kowloon Peninsula, and the New Territory. Within the evacuation area, houses were destroyed, cultivated grounds were ruined, and numerous coastal people were killed and injured.¹⁹ When the imperial decree was fully withdrawn in

¹⁵ Dalrymple, *Observations on the southern coasts of China and the island of Hainan*, London, 1806, after p.20 in the text. Cited from Hayes, *Hong Kong*, p. 16.

¹⁶ See *inter alia* Lo Hsiang Ling, et al., *Hong Kong and its external communication before 1842: pre-history of Hong Kong*, Xianggang, Zhongguo xue she, Minguo 52 [1963]; Jao Tsung-I, *Kowloon with its historical materials in the late Song Dynasty*, Xianggang, Wan you tu shu gong si, 1959; Siu Kwok-kin, *Heritage trails in urban Hong Kong*, Hong Kong, Wan Li Book Co, 2001; Siu Kwok-kin, *Hong Kong's economic situation during the early period of coastal reclamation*, Tai Pei, S.N., 1984; and, Lin Tian Wei, *Hong Kong studies in the past 70 years*, Xianggang, Zhuhai shu yuan, 1981.

¹⁷ Many of these Chinese narratives have been translated into English. 'Hong Kong before the British' by Stephen Balfour is a notable loyal synthesis. S.T. Balfour, 'Hong Kong before the British', in 11-12 *T'ien Hsia Monthly*, 1940-41, pp. 330-352, 440-464.

¹⁸ Sun Pao Ting, 'Early Chinese Community in Hong Kong 1841-1870', PhD dissertation, Department of History, Hong Kong University, 1988, p.10.

¹⁹ In Xin'an, the population shrank dramatically as a result of the evacuation, causing a rapid economic decline. The history of the Wen family (温氏), who live in Lung Yeuk Tau (龙跃头), Fanling (粉岭) in the New Territory evinces the dire consequences of the evacuation. The village was moved, all buildings were destroyed and farmlands were abandoned. After eight years living an itinerant existence, the majority of the villagers had died of starvation. When the decree was rescinded and the original inhabitants were permitted to return, they were only allowed to engage in farming. Fishing was not permitted. As the region's wealth had arisen, in part, from the sea, this ban on harvesting the sea's riches was detrimental to the region's

1684, only one-tenth of the indigenous people returned. To attract more migrants to the coastal area, the local government of Xin'an implemented policies to encourage land reclamation. It was during this period that the majority of the Hakka (Ke Jia, 客家) and Hoklo (Fu Lao, 福佬) people moved from North China to the South coast, including the Hong Kong area. The Hakka and Hoklo, together with the Punti (Cantonese) and Tanka who already lived in the Hong Kong area, constituted the four main ethnic groups comprising the local Chinese community of Hong Kong.²⁰ Later, despite the in-flush of Chinese immigrants into colonial Hong Kong, this basic ethnic structure of Hong Kong Chinese society was to remain roughly unchanged into the early twentieth century. As observed by some historians of Hong Kong, by the late 1860s, these Chinese ethnic groups in Hong Kong had developed their internal system to set disputes, look after their own welfare according to Chinese customs and traditions.²¹

1.2 Hong Kong, a 'filthy and pestilential' island²²

On 26 January 1841 the British flag started to fly over the island. From that day, the Chinese inhabitants of Hong Kong became 'the subjects of the Queen of England' and 'all the lands, harbours, or personal service on the island were belonged to Her Majesty.'²³ In order to attract more Chinese to the new colony, Captain Elliot laid down important principles in his initial proclamations that Chinese residents would be governed according to 'the laws, customs, and usages of the Chinese (every description of torture excepted)'.²⁴ 'Pending Her Majesty's Pleasure', Chinese inhabitants in Hong Kong were 'further secured that in the free exercise of their religious rites, ceremonies, and social customs, and in the

prosperity. Guojian Xiao, *Qing chu qian hai qian hou Xianggang zhi she hui bian qian (Hong Kong's Social Transformation before and after Qing's Evacuation)* Taipei: Shangwu Yinshu Guan, 1986, pp. 165-166.

²⁰ Ting, 'Early Chinese Community in Hong Kong 1841-1870', 1988, pp.140-180.

²¹ Sun Pao Ting, 'Native Chinese peace officers in British Hong Kong, 1841-61', In David Faure ed., *Hong Kong: A Reader in Social History*, Hong Kong : Oxford University Press (China), 2003, pp.77-91; James Hayes, 'Sek Pik, a multilineage settlement of Cantonese farmers', in Faure, *Hong Kong: A Reader in Social History*, pp.38-76. Elizabeth Sinn, 'A History of Regional Associations in Pre-war Hong Kong', in Faure ed., 2003, pp.121-156.

²² Bernard, *Narrative of the voyages and services of the Nemesis*, London: Colburn, 1844, p.63.

²³ This first proclamation was issued jointly by Bremer, Commander-in-Chief and Captain Elliot on 1 February 1841.

²⁴ See the proclamation issued on 2 February 1841 under the seal of Captain Charles Elliot, the Chief Superintendent of Trade and Her Majesty's Plenipotentiary in China: James William Norton-Kyshe, *The history of the laws and courts of Hongkong from the earliest period to 1898*, Hong Kong: Vetch and Lee Limited, 1971, pp. 5-6.

enjoyment of their lawful private property and interests'.²⁵

However, rejoicing in the acquisition of Hong Kong did not last long. The British colonists were soon overwhelmed by disasters. Ironically, their problems did not stem from pressure from the Chinese empire or from resistance of local Chinese inhabitants. Instead, the most serious early threat was disease, and a particularly endemic and notorious 'Hong Kong fever'. In January 1841, only a few days after the British landed at Hong Kong Island, 'the sickness spread among the men with alarming rapidity', so that 'out of the small force no less than *eleven hundred men* were upon the sick-list at Hong Kong.'²⁶ William Bernard commented that 'the prevailing sickness proved to be a far more formidable enemy to the navy than any troops the Chinese could bring against them.'²⁷ In 1842, the Indian troops stationed at West Point Barracks (above Pokfulam Road) lost nearly half their number. In the summer of 1843, the terrifying Hong Kong fever broke out.²⁸ Between May and October that year, up to twenty-four percent of the soldiers died of fever while ten percent of the European civilians also fell to the disease.²⁹

As early as 1841, the loss of Sir Le Fleming Senhouse and a good many other men, and the continuing sickness on board ship and onshore, threw a gloom over the whole expedition. In 1843, the fever took the lives of more prominent figures among the European community. Sir John Robert Morrison, the son of Dr Robert Morrison, died on 29 August 1843 after a week's fever. His death was announced by the Governor as a 'positive national

²⁵ Elliot's proclamation of 1 April 1841. Some scholars have claimed that Elliot's two proclamations laid down the foundations for Hong Kong's legal pluralism, with the effect that Chinese laws and customs that had prevailed before the cession continued to be in force and in parallel with transplanted British laws. See Yigong Su, 'Xianggang shiyong zhongguo chuantong falü yu xiguan de ge'an yanjiu' (Individual case studies on the application of Chinese traditional law and custom in Hong Kong'), 3 *Zhongguo shehui kexue* (Chinese Social Science), 1999, pp. 155-168; and H. McAleavy, 'Chinese law in Hong Kong: the choice of sources', in N. Anderson ed., *Changing law in developing countries*, London: Allen & Unwin, 1963, pp. 258-269. Other scholars have questioned Elliot's authority to issue proclamation, owing to Hong Kong's dubious status between the British occupation in 1841 and the rectification of the Nanjing Treaty on 5 April 1843: see Peter Wesley-Smith, 'Chinese law and custom as a source of law', in Wesley-Smith, *The sources of Hong Kong law*, Hong Kong: Hong Kong University Press, 1994, pp.205-224. Nevertheless, Elliot's proclamations were cited from time to time by local Chinese elites in recriminations against the colonial government's interference in Chinese life throughout the entirety of the colonial period.

²⁶ Italics in original. W.D. Bernard, *Narrative of the voyages and services of the Nemesis*, London: Colburn, 1844, p. 63.

²⁷ Note above.

²⁸ Choa, *The Life and Times*, p. 80.

²⁹ Hong Kong Museum of History, *We shall overcome: plagues in Hong Kong*, Hong Kong: Leisure and Cultural Services Dept.(bilingual in Chinese and English), 2003, pp.1, 6.

calamity'.³⁰ As a widely respected Christian missionary, Morrison's death undoubtedly affected the British community in the newly acquired colony of Hong Kong.

Overwhelmed by conditions at Hong Kong, it was understandable that many Europeans were frightened to visit the new colony. As Bernard observed, 'the reputed unhealthiness of the town of Victoria has deterred many from coming over from Macao for the present, who otherwise contemplated establishing themselves on the island.'³¹ The reputation of Hong Kong even reached back to London. As the London *Observer* remarked in 1843, at least seven barristers were offered an attractive income to visit Hong Kong, but not one accepted the offer. The reason was simply fear of the climate in Hong Kong.³²

In addition to epidemic disease and malaria, the problem of robbery and pirates was also grave. By spring 1843, burglaries were almost an everyday occurrence, and even Government House was not spared.³³ The twin specters of sickness and piracy haunted the fledgling colony, challenging the confidence of colonists and threatening their attempts to transform the 'barren island' into a 'great emporium' in the Far East. It was at this stage that the reputation of Hong Kong as a pestilential and vulnerable island was formed and the underlying tone of subsequent British imperial discourse was established.

A group of British colonists started fiercely to oppose the occupation of Hong Kong Island. Montgomery Martin, the treasurer of the colony, considered the occupation of Hong Kong to be nothing but a waste of money.³⁴ Henry Charles Sirr, the first barrister in the colony, arrived in Hong Kong in July 1844 and

deemed it a duty that we owe our fellow-men to speak truthfully and plainly of the insalubrities of China generally, but especially of Hong-Kong Much may have been attempted and done to render Victoria healthy, but, as already shewn [sic] from the geological character of the Island, no part of Hong-Kong ever can be salubrious.³⁵

Thus, Hong Kong, a place described by western travellers as a picturesque and peaceful island before the British occupation, now earned a reputation as a dangerous and

³⁰ Norton-Kyshe, p. 29.

³¹ Bernard, 1844, p. 80.

³² Norton-Kyshe, vol. I, p. 43.

³³ Sheila E. Hamilton, *Watching over Hong Kong*, Hong Kong University Press, Hong Kong, 2008, p. 17.

³⁴ Montgomery Martin, the treasurer of the colony, returned to England in 1845 with the intention to 'induce H.M. government to give up Hongkong again to the Chinese, and to take in lieu the island of Chusan, which it is now found is much better adapted for the purposes of trade, more healthy, and unquestionably more productive. While Hongkong is a barren rock, Chusan is quite the reverse, and would produce rice enough to support a very large population.' Editor, '[Notes on Hong Kong]', in 14 *The Chinese Repository*, Canton: Printed for the proprietors, 1845, p.546.

³⁵ Henry Charles Sirr, *The China and Chinese*, London: Orr, 1849, p.58.

insalubrious spot ill-suited to the European constitution.

A curious question arises: why did the same island of Hong Kong garner such distinct reputations before and after the British occupation? A reasonable explanation of this dramatic change might be the sudden change of social conditions. As some medical historians have observed, malaria often accompanies ecological changes, especially the construction of water reservoirs and the exploitation of new lands.³⁶ The sudden changes affecting life in Hong Kong as a result of the First Opium War could well have affected the disease's outbreak. The arrival of the British troops and the menace of lawless vagrants dramatically changed the peaceful idyll of Hong Kong Island. The next section will investigate the reactions taken by the colonial government to the health problems in the early years of the colony. As we will see, the manner in which the colonial rulers' perception of the causalities of disease had a close connection with later policies and legislation on public health, as well as with the imperial narrative of Britain's role in transforming Hong Kong.

2. Early public health policies and local resistance

Before the real causes of disease were surmised, everything on the island was suspected: its 'pernicious' atmosphere, the 'fatal' consequences of exposure to the sun, the 'bad construction' of buildings, the 'ill paved drains and sewers' and even the lifeless rocks were viewed with suspicion.³⁷ The high mortality among the European community compelled the colonial government and its medical professionals adamantly to resolve the health problems besetting the colony.

2.1 Chinese insanitary houses and paddy grounds were suspected

In August 1843, with the fledgling colony's health in its most precarious state, a committee was appointed by the government to enquire into the causes of the illness then ravaging the settlement and to suggest measures to be adopted for the purpose of counteracting its effects.³⁸ This committee comprised two medical professionals, a successful

³⁶ See Shiyung Liu, 'The Theory and Practice of Malariology in Colonial Taiwan', in Yip ed., *Disease, colonialism, and the state: malaria in modern East Asian history*, Hong Kong: Hong Kong University, 2009, pp. 49-60.

³⁷ 'The principal causes of sickness, we think, have been, first, exposure to the heat of the sun; secondly, excess in eating and drinking,—especially the latter; and thirdly, bad houses.' See Editor, 'Notice of Hong Kong', 15 *The Chinese repository*, Canton: Printed for proprietors, 1846, pp. 290-298. Bernard wrote that 'various other surmises have been hazarded, some, perhaps, a little fanciful, such as that the rocks of which the mountains are composed have some peculiar property, when water lodges in them, of producing miasmata [sic]'. See W.D. Bernard, *Narrative of the voyages and services of the Nemesis*, London: Colburn, 1844, pp. 77-78.

³⁸ 'Second Report of the Committee on Public Health and Cleanliness', *Hong Kong Register*, 10 September 1844, pp. 154-155.

merchant, a lawyer and a land officer.³⁹ After investigating the island's sanitation, the committee submitted five reports, each concerning a different area of the island.

According to these reports, the surveys carried out by the committee centred principally on roadside drainage, watercourses and sewers. The committee recommended detailed and concrete improvements to the public drainage system and advocated general cleanliness in the streets and bazaars. Though the main task of this committee was not to investigate the real cause of the epidemic, the reports did point to connections between the disease and the environment. One such connection was the poor construction of buildings, mainly those of Chinese residents. The second report stated that 'the China [sic] houses behind Lane's tavern are in a most fearful state of filth, and cleanliness in that neighbourhood should be stringently enforced by the Police.'⁴⁰

Another connection was the swampy nature of rice paddies. According to the committee, 'the cultivation of rice seems to be most prejudicial to the health of Europeans in this climate'. '[I]t is hereby recommended that it should cease throughout the island,' the committee concluded, especially in 'the Valley of Wongnichung (黄泥涌) and Suakwongpoo (扫竿浦), which require immediately draining'.⁴¹ The connection between rice cultivation and Hong Kong Fever was one that other medical professionals not associated with the committee also asserted. In his book *Medical Notes on China*, the medical officer Dr Wilson made a detailed record of death and disease occurring in the years of 1843 and 1844 in Hong Kong. Dr Wilson observed that broken paddy grounds were dangerous to public health.⁴² Indeed, it is this question of the insalubrity of paddy fields that reveals the dramatic environmental change of Hong Kong Island before and after the British occupation.

The malaria that broke out in 1841 did so initially at two British barracks. One was located in Wong Nei Chong valley and the other at West Point. Both happened to be surrounded by paddy grounds. Some of these paddy fields, as Dr Wilson and his contemporaries observed, were still under cultivation. Many, though, had been abandoned and had deteriorated into fetid and stagnant swamps. With the approach of summer in 1841 the epidemic raged, and the Europeans to suffer most were those nearest the swampy areas. When the Hong Kong fever broke out in 1843 a similar phenomenon emerged. These facts

³⁹ The five members were: Dr. Peter Young, William Scott, the land officer A.T. Gordon, Charles Hillier and the acting colonial surgeon Charles A. Winchester, see 'Government Notification', in *The Friend of China and Hongkong Gazette*, 17 August 1843, p. 100.

⁴⁰ See 'the Second Report of Committee on Public Health and Cleanliness', *Hong Kong Register*, 10 September 1844, pp. 154-155.

⁴¹ See 'Fourth Report of Committee on Public Health and Cleanliness', *Hong Kong Register*, 21 August 1843 and 15 October 1844, p. 176.

⁴² John Wilson, *Medical notes on China*, J. Churchill, London, 1846, p. 148-150.

drove many Europeans to believe that the paddy ground was the chief source of the disaster.

Among the recommendations of the committee, that which called for the drainage of rice paddies was given particular and immediate attention. The recommendation had specifically urged the termination of rice cultivation and the draining of rice fields in Wong Nei Chong (黄泥涌) and Soo Cum Poo (扫竿浦) valleys. Though the Committee's reports did not explain why these particular areas of rice cultivation were the gravest threats to the colony's health, the government accepted the recommendation and reacted promptly. Another committee was established in January 1844 to resolve the matter. Major Caine was then the Chief Magistrate and Captain Superintendent of Police, the highest rank among the committee's members. As such, Caine headed the committee. Gutzlaff, the Chinese secretary, and interpreter, and Gordon, the land officer, were to carry out the committee's tasks.⁴³

On 20 February, Gordon submitted to the Executive Council a letter containing an estimate of the expenses arising from the draining of Wong Nei Chong and Soo Cum Poo valleys.⁴⁴ The land officer was subsequently authorised to proceed with the drainage of the two valleys.⁴⁵

2.2 Chinese landowners' resistance

According to the records, some \$8,000 or \$10,000 were paid for certain fields in Wong Nei Chong and Soo Cum Poo.⁴⁶ The money was not, however, paid to the Tang family (邓氏家族), the original owners of the land. Instead, it was paid to the tenants occupying the land who claimed to be the true and rightful owners.⁴⁷ In a petition submitted by the Tang to the Xin'an district, the family argued that:

It happened that the treacherous barbarians have usurped these lands for building purposes and the crops in the area are destroyed. Following this the dishonest tenant Yip Shin-tak (叶先德) and others made use of this chance and

⁴³ For information on the positions held by the committee members, see *Colonial Government of Hong Kong*, in *The Chinese Repository*, vol. XIII. 1844, pp. 18-20.

⁴⁴ See the meeting minutes of 28 February 1844, in CO.131, vol. 1 (1844-1847), p. 11.

⁴⁵ See the meeting minutes of 20 March 1844, CO.131, vol. 1 (1844-1847), p. 13.

⁴⁶ The editor of the *Hong Kong Register and Government Gazette* wrote: 'We are happy to hear that Government have purchased in perpetuity, from the Chinese inhabitants, the whole cultivated ground between the Victoria Gap and the point to the eastward of where Mr. Burn Proposed building, and extending to the tops of the hills and head of the Wong-nai-chung valley. The sum paid we understand has been nine thousand nine hundred Dollars.' See Editor, [untitled], *Hong Kong Register and Government Gazette*, 25 June 1844, p. 110.

⁴⁷ The Tang (Deng) family (邓氏家族), as mentioned above, had owned at least parts of Hong Kong Island as far back as the Ming dynasty (1368-1644). The family had paid imperial land taxes for two centuries or more, and its members were considered by the imperial government as the true and lawful landlords. For further details on the Tang family, see N. B. Dennys, *The Treaty Ports of China and Japan*, London: Trübner, 1867, pp.128-132.

declared their own the field behind the houses at Wong Nei Chung, which was the same piece of land leased to them [by the Tangs], and sold it to the English barbarians. Thus my land was usurped and sold. I have lost this piece of land, together with the rent and grain that I should receive from my tenants. I have reported this case to the former magistrate begging him to defer my payment of taxes, and he had granted permission to investigate my case I also beg your Excellency to order the arrest of the treacherous tenant Yip Shin-tak (叶先德) and help me to recover my land.⁴⁸

According to Hays, the case was still unsettled nearly a year later. Ten of the Tangs' tenants from Wong Nei Chung and Soo Kon Po were listed as refusing to pay rent in another petition of the twenty-third of the fourth moon of Tao Kuang's twenty-fourth year (8 June 1844).⁴⁹ Compare the date of this petition with colonial records reveals that, by June 1844, the valleys of Wong Nei Chong and Soo Koon Poo had already been drained and rice cultivation had stopped.⁵⁰ In accepting compensation from the colonial government, the tenants demonstrated their loyalty to the British government rather than to their former landlords.

The complex development of public health can be seen in this anecdote. The colonial government's policy of stopping rice cultivation was motivated by public health concerns. And the colonial government was willing to pay for public health improvement by giving compensation for the losses of the farmers. But the current study cannot find evidence to tell why the Tang's family was not compensated by the colonial government. Was it because Chinese traditional landownership system too complicated for the alien government to understand? Or the colonial government deliberately neglected Chinese real landlords' interest to avoid paying higher compensation? Nevertheless, the Tang family attempted to restore their position over the island by appealing to the Qing dynasty's authority.

Towards the end of 1844, the Tang's case was finally settled. The treasurer of Kwang-tung (广东) sent an official letter to Hong Kong Governor John Davis, saying that 'as the said Tang's fields are situated within the jurisdiction of Hong Kong, the Chinese high officials consider it not proper to exact the [land] tax from Tang, because Hong Kong is

⁴⁸ This petition and other documents from the Chinese were kept by the Tang family of Kam Tin, New Territories. James Hays translated them into English in his essay 'Hong Kong Island before 1841', in *24 Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1984, pp.105-140.

⁴⁹ Cited in Hays, 'Hong Kong Island', p. 25.

⁵⁰ The editor of the *Hong Kong Register and Government Gazette* wrote: 'We have happy to learn that Government has purchased the whole of the Paddy grounds in the neighbourhood from the Chinese who possessed them. The most of these have been already drained so as to render them no longer available for paddy cultivations.' [untitled], *Hong Kong Register and Government Gazette*, 28 May 1844, p.95.

made a possession of your Honourable Country.⁵¹ Thus, the Tang family's tenants on perpetual leases on Hong Kong Island were freed of their payments to the owners (viz. the Tang). Furthermore, the tenants held land on payment of crown rent to the Hong Kong government thenceforth.⁵² Resistance from local Chinese landowners to the destruction of paddy fields was finally defeated. However, it was not resolved by a mutual understanding in terms of health improvement, but actually through political and sometimes diplomatic resolution processes.

The Tang family's position under Chinese law was not supported by the colonial government. When the paddy grounds were cleared, no compensation was given to the family. As public health measures were carried out, misunderstandings and animosity festered among elements of the Chinese community. This might help to explain why, several decades later, the British government acquisition of Kowloon Peninsula and the New Territories saw fierce resistance from Chinese inhabitants, not least among them the Tang family. That family, alongside other landowners, had much stronger support in these two regions than on Hong Kong Island.⁵³

While the colonial government considered the cessation of rice cultivation an effective method for freeing the community from the affliction of malaria, the Chinese inhabitants disagreed, to the extent that they were prepared to 'join the forces to expel these barbarians if such Chinese forces available'.⁵⁴ In this case, the conflicts between the Chinese and the

⁵¹ 'Communication dated the fifteenth day of the eleventh month of Tao Kuang's twenty-fourth year', 24 December 1844, in COL29/7/9807, p. 326.

⁵² Hays, 'Hong Kong Island', p. 27.

⁵³ For a detailed account of some of the issues over land rights following the British occupation of the New Territories please see, Michael Palmer, 'The Surface-Subsoil Form of Divided Ownership in Late Imperial China: Some Examples from the New Territories of Hong Kong', 21(1) *Modern Asian Studies*, 1987, pp. 1-119.

⁵⁴ Petition dated the eighth day of fourth month of Tao Kuang's twenty-first year (28 May 1841), sent to the district magistrate of Xin'an by the Tang family. The petition offers a different perspective to that of British colonial discourses on the island after their landing. Not many Chinese materials directly state Chinese views on the colonial government at that time. As such, consider the following lengthy quotation:

'We inherited from our forefathers the taxable lands in the following places [named severally]. There are official registration records in respect of our ownership of the afore side lands which are collectively known as Kwan Tai Lo (群大路) of Hong Kong Island (香港島). These areas have previously been leased to fanners Pang Shun-yau (彭信有) and Chow Ah-yau (周亞有) for cultivation. The situation had always been peaceful and quiet until they came to us and complained of forcible occupation of the lands around Kwan Tai Lo area by English barbarians (英夷) whose ships were anchored in the neighbouring bay. These barbarians destroyed their crops to make way for roads and built huts on the unploughed fields. Knowing the fierce and violent nature of these barbarians, our tenant-fanners dared not negotiate with them.

'We depend on the rents collected to pay our tax and support our families. Now that we have been robbed of our vital resources, where are we to turn to for our livelihood? Faced with such

colonial government over the matter of the rice fields did not escalate into violence. The potential, though, was there. In order to carry out policies and to execute laws in the interest of public health, an effective mechanism of communication between the colonial government and local society needed to be established. In the 1840s, however, no such mechanism existed, and each party looked skeptically on the other.⁵⁵

We now know that the ‘Hong Kong fever’ was a particularly malicious strain of malaria. For European colonists at the time, however, the ailment was thought to result not from mosquitos but, rather, from the ‘insanitary’ Chinese presence on the island. Europeans associated Chinese subjects with disease and death. Once this association was widespread, Chinese habits and activities became the target of ‘public health improvement’. Chinese subjects, of course, objected with such interference. Their recriminations stressed the irrationality of the colonial government’s public health policies, yet the government persisted in attempting to reform Chinese habits. This can be explained, as this chapter does, by the ‘sanitary syndrome’ that afflicted white colonists in Hong Kong as it had in many other tropical colonies.⁵⁶ Once it had developed in the fledgling colony, it spread until it exerted considerable influence over Hong Kong’s public health policy and legislation. The following section examines the impact of ‘sanitary syndrome’ upon Hong Kong’s public health legislation.

Limited by space, the second half of this chapter does not look into the details of historicity but highlights some important public health events so that to provide a general picture of Hong Kong’s historical setting. Hopefully, this combination of a somewhat thick

stringent circumstances, we feel obliged to bring the case to your attention. Should we be exempted from the payment of land tax for the ravaged areas or are we to join forces to expel the barbarians? We should be most grateful if you would give us advice on this urgent matter at your earliest convenience.’ A translation of this petition is in Hayes, ‘Hong Kong Island’, pp. 23-24.

⁵⁵ As the petitions submitted by the Tangs demonstrate, the English ‘barbarians’ were considered fierce and violent. As a result, they did not dare negotiate with the British directly. This fear likely prevailed among local Chinese. When the British arrived, they saw many paddy grounds were abandoned, which indicated that some villagers might have been frightened away by the Europeans’ arrival. The impression of local Chinese among the British was anything but good. Europeans complained that ‘the lowest dregs of native society flock to the British Settlement, in the hope of gain or plunder. Although a few of the better classes of shopkeepers are beginning to settle in the colony, the great majority of the new comers are of the lowest condition and character.’ See George Smith, *A Narrative of an Exploratory Visit to Each of the Consular Cities of China, and to the islands of Hong Kong and Chusan: on behalf of the Church Missionary Society*, New York : Harper & Bros, 1847, pp.158-159.

⁵⁶ ‘Sanitary syndrome’ is a syndrome afflicted European colonists especially in tropic colonies where the indigenous are seen as the unclean vectors of disease. This syndrome impelled the formulation of policies of racial segregation and racial discrimination. Restrictions were imposed on indigenous communities in the name of public health. Maynard W. Swanson, ‘The sanitation syndrome: bubonic plague and urban native policy in the Cape Colony, 1900-1909’, 18 (3) *Journal of African History*, 1977, pp. 387-410, especially pp. 387-389.

description and a thin one will not confuse the readers but offer an overall perspective of Hong Kong's setting with some detailed insight.

3. 'Sanitary syndrome' and its legislative impact

Not long after British settlers occupied Hong Kong, they were soon afflicted by various tropical diseases, for instance the 'Hong Kong Fever' (which first broke out in 1841, and later was identified as malaria), cholera (1858), tuberculosis (1882), the bubonic plague (1894), diphtheria and so on so forth. These diseases kept revisiting Hong Kong and took away numerous souls of British soldiers and civilians. The problem of recurrent disease, which in British military officers' opinions, 'proved to be a far more formidable enemy to the navy than any troops the Chinese could bring against them.'⁵⁷ Perhaps due to the resulting unhappy start of fatal illness, Hong Kong obtained a notoriety of "pestilential island" almost immediately after it became the crown colony of British Empire.⁵⁸

Unfortunately, during the transformation process, Chinese subjects, their filthy living space, sanitary behaviour and medical customs in particular were deemed the source of disease by some of the colonial authorities.⁵⁹ The fear of being infected by colored people is not peculiar to British settlers in Hong Kong but experienced by European rulers in many other colonies, especially in tropical areas.⁶⁰ To protect the health of Europeans, various sanitary measures were taken, including the geographical isolation between 'white' and 'colored' communities. European's fear of disease and the introduction of racial segregation in the colonial context are described by some scholars as a 'sanitation syndrome', which also afflicted British expatriates in Hong Kong.⁶¹ Indeed, as seen from the above Section 2, not long after British expeditioners settled down in Hong Kong, native Chinese were criticised as being the source of disease.⁶²

⁵⁷ Bernard, W. D, *Narrative of the voyages and services of the Nemesis, from 1840 to 1843 and of the combined naval and military operations in China: comprising a complete account of the colony of Hong Kong, and remarks on the characters and habits of the Chinese*, vol II, p.63.

⁵⁸ Ibid, p.80.

⁵⁹ E.G..Pryor, 'A Historical Review of housing conditions in Hong Kong', in 12 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1972, pp. 89-129.

⁶⁰ Anthony King, *Urbanism, Colonialism, and the World-economy: Cultural and spatial foundations of the world urban system*, (London: Routledge, 1989), pp.54-55.

⁶¹ Maynard W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909', 18 (3) *Journal of African History*, 1977, pp.387-410, esp., pp.387-389.

⁶² For instance, the formidable 'Hong Kong Fever' (malaria) which broke out in 1841 and became prevalent in 1843 was originally believed to be caused by Chinese swampy paddy grounds and their insanitary housing and drainage conditions. For a vivid description of how the disease of malaria influenced the living space between European and Chinese communities in the Hong Kong Island see, Christopher A. Cowell, *Form follows fever malaria and the*

For the protection of European health, the British Hong Kong government took measures separating European and Chinese communities,⁶³ and issued restrictive policies preventing Chinese buying houses in certain areas.⁶⁴ One extreme result of European concern for public health, and for being spared from having Chinese neighbours, was the preservation of two districts for Europeans by two ordinances: Victoria Peak in 1888, and Cheung Chau Peak in 1919.⁶⁵ As some historians comment, this Hill Reservation Ordinance ‘thinly disguised as a health measure’ was ‘a more outrageous example of racial discrimination can hardly be imagine’.⁶⁶ The Hill District and the Cheung Chau ordinances remained in force until the year 1946, repealed by ordinances No. 10 and No.11 of 1946 respectively. Under the ordinances, no person could live in these areas without a licence from the Governor. Apart of a number of domestic servants and labourers, very few Chinese were granted such a licence before the Second World War.⁶⁷ Health-conscious Europeans lived well above in the Peak, with the assistance of Chinese society, but without any interference from it. Thus the small colony of Hong Kong was divided into two main ‘cities’: one Chinese and the other European, with each sticking to its own laws and customs.⁶⁸

Diseases however pay no heed to boundaries. Despite the geographical segregation, whenever the endemics broke out, Europeans were also attacked by the disease, sometime

making of Hong Kong, 1841-1848, M. Phil. Thesis, Department of History, Hong Kong University, 2009.

⁶³ Before 1842, Chinese residents mainly located in the upper market (Taipingshan and Saiyingpun), middle market (slope against the Central) and the lower market (nearby Suhang Street). Due to the precious price of land in the Central, Hong Kong government intended to develop the Central as a European district so moved Chinese to the Taipingshan district. See Joseph Sun-pao Ting, *Xianggang zaoqi zhi huaren shehui 1841-1870 (Chinese community in early colonial Hong Kong 1841-1870)*, PhD thesis, Department of History, Hong Kong University, 1988. See also Dafydd Emrys Evans, ‘China Town: The beginning of Tai Ping Shan’, 10 *Journal of Royal Asiatic Society Hong Kong Branch*, 1970, pp.69-78.

⁶⁴ For instance, for the protection of British soldiers’ health in Hong Kong, the Colonial Office and the War Office reached an agreement that within 200 yards around the camp in the Kennedy Street, Chinese were not allowed to build houses or cultivate plants. See ‘Letter from the Colonial Office to the War Office, 9 April 1880’, enclosed in ‘Hong Kong (Restrictions upon Chinese)’, in *British Parliament Paper*, 1881(426), p.11.

⁶⁵ The European District Reservation Ordinance, no.16 of 1888 was published in *The Hong Kong Government Gazette* (hereafter *HKGG*), 5 May 1888, pp.464-465. The Cheung Chau (Residence) Ordinance, no. 14 of 1919 was published in the *HKGG*, 29 August, 1919, p.360.

⁶⁶ Solomon Bard, *Voices from the Past: Hong Kong 1842-1918*, Hong Kong: Hong Kong University Press, 2002, p.205.

⁶⁷ Henry J. Lethbridge, ‘Caste, Class and Race in Hong Kong Before the Japanese Occupation’ in Marjorie Topley ed. *Hong Kong: the Interaction of Traditions and Life in the Towns*, Imprint [Hong Kong: Royal Asiatic Society Hong Kong Branch], 1975, pp.42-64, particular at pp.50-52.

⁶⁸ Hayes, James (1983) ‘Hong Kong: Tale of Two Cities’, in James Hayes *The Rural Communities of Hong Kong: Studies and Themes* Oxford: Oxford University Press, pp.127-134.

suffered great loss.⁶⁹ Apparently, racial segregation was only expedient measure. The key point was to eliminate the ‘source’ of disease which in many Europeans’ opinion was closely connected with Chinese [insanitary] living space and habits. Thus on the one hand, Chinese community was kept away from European residential area as far as possible. On the other hand, various public health laws and bye-laws were introduced to regulate Chinese. Through the extended arm of public health law, it was hoped that Chinese subjects were able to live according to western medical and sanitary standards, so that became less harmful or dangerous to public health.

As will be seen in this dissertation, Chinese living space and sanitary behavior were stringently regulated by the transplanted public health laws. Thus, despite Elliot’s Proclamation, public health laws became mostly intrusive into Chinese daily lives. Chinese on the other side ‘stubbornly’ insisted their own sanitary and medical traditions and resisted any Europeans’ ‘undue’ interference. The colonists’ ‘sanitary syndrome’ was one important reason for the refusal of indigenous health ways, and the embedded superiority of western methods was another important reason. This kind of superiority of western methods was particular apparent in the area of public health. Public health became a noisy and blatant place displaying fears, desires, different opinions and interests of Chinese and European community.

Before taking the substantive case studies of specific ordinances in the following core chapters, it is important to have a general socio-historical picture of Hong Kong’s public health development.

4. A sketch of Hong Kong’s public health law, 1841-1940

From a socio-medical perspective, the development of Hong Kong’s public health laws may be roughly divided into four phases under the period of review. This section gives a brief account of each phase so that to furnish the readers some necessary socio-historical backgrounds for each case study in the following core chapters.

4.1 Loud law to a deaf Chinese community, 1840s-1860s

Public health legislation in this period was pre-modern, fear driven and tapped by ‘legal music’ with a strongly colonial tune. The presence of ‘dirty’ Chinese had long been accused as a menace to the public health, especially during the epidemic times.

As early as in the 1840s, when the newly arrived British colonists were attacked by

⁶⁹ For a very concise introduction of Hong Kong’s history of endemics and epidemics, please read the pamphlet *We shall overcome: plagues in Hong Kong*, Hong Kong: Leisure and Cultural Services Dept, 2003.

the so-called 'Hong Kong Fever' (later identified as malaria), the ill constructed native Chinese houses and their paddy grounds were suspected as possible cause of the fatal endemic. In response, the Good Order and Cleanliness Ordinance No.5 of 1844 was passed as Hong Kong's first piece of public health law. The Ordinance No.5 of 1844 and its replacement, the Summary Offence Ordinance No.14 of 1845 interpreted public health issues as individual sanitary behaviours. People's 'unhealthy' conduct (in most cases this was considered officially only to be a problem with the Chinese community) was punished harshly.⁷⁰ For a better regulation of filthy Chinese houses, the Buildings and Nuisances Ordinance No.8 of 1856 was enacted and gave the colonial government complete controls over the construction of all the buildings in the Colony. Chinese elite constantly complained that the stringent Buildings and Nuisances Ordinance imposed upon them the so-called 'Western sanitary science'.⁷¹ But Chinese complaints were hardly listened to by then colonial authorities.

In the 1850s and 1860s, syphilis prevailed among European troops in Hong Kong. The filthy conditions of the Chinese brothels were criticized as the source of this contagious disease by the medical authorities. The Colonial Surgeon warned that if the housing sanitation of the brothels were not improved, the Colony of Hong Kong would soon be the grave of Europeans.⁷² In response, the Venereal Diseases Ordinance No.12 of 1857, which was replaced by the Contagious Diseases Ordinance No.10 of 1867 imposed compulsory medical examination for prostitutes and the strict inspection of brothels used by the European community.

By placing the Chinese subjects under a strict legislative control, rather than improving the living environment of Chinese residents with an understanding and sympathetic mind, doomed the Colony's early sanitary laws. The Colony's English-based laws kept roaring louder and louder, yet the Chinese community did not listen and was not listened to. Isolated from English law, all they did was to resort to their traditional Chinese ways. The emergence of kaifongs and the prevailing of secret societies in this period might in other way reflect their dissatisfaction with the colonial government and indifference to the colonial laws.⁷³

⁷⁰ [untitled article] *Hong Kong Register*, 10th September 1844, pp.154-155.

⁷¹ J. Pope Hennessy, 'The Governor's Report on the Blue Book', *HKGG*, April 1881

⁷² Report on the Licensed Brothels in Hong Kong, dated 19th January 1874.

⁷³ Ting Sun Pao, 'Early Chinese Community in Hong Kong 1841-1870', PhD dissertation, Department of History, Hong Kong University, 1988. Kaifong, in mandarin is Jie Fang (街坊, literally, neighbourhood associations or street committees). Kaifong is a kind of self-regulated association prevalent in urban places in the South coast China. It existed throughout Hong Kong's colonial history and continues to exist today. The main objectives of Kaifongs are to

4.2 West or east, legislation at the crossroads, 1870s-1880s

By the time 1870s, a richer and more powerful Chinese community emerged. The increasingly vibrant Chinese community was more and more unsatisfied with the suppression imposed by the colonial sanitary laws. Doubly represented by some prestigious Chinese associations and the Registrar-General, Chinese community was able to communicate with the colonial government.⁷⁴ With better communications, some public health problems such as the pig-raising problems were settled. Some problems were improved. Many other problems were however too controversial to have a one-stop solution. For instance, the mitigation of in-house crowding. While Chinese landlords were criticised by Europeans to be 'too greedy', Chinese emphasized their stringent living conditions imposed by colonial segregation policies. If the colonial government required private property owners to reconstruct in line with western public health standards, the sacrifice of private interests would have to be compensated.

Although the colonial government had realized the problems, lacking of money was always the excuse to avoid touching the hot issue of public health. In any case, the colonial government was reluctant to disturb the Chinese more than necessary.⁷⁵ As a result, Chinese welfare was left to the Chinese own hands. When the I-ts'z scandal put the colonial government in an embarrassment, the newly established Chinese hospital of the Tung Wah came just in time to fill the gap between the colonial government and Chinese community.⁷⁶

take care of neighbourhood welfares, collect subscriptions for the poor or disaster reliefs and organization of certain traditional activities, say Lion and Unicorn Dances. In the early years, the leaders of Kaifongs were usually good at mediating neighbourhood disputes and had some extra money to offer those in need. In this role, they were useful people who delivered necessary services for the local Chinese. But they were neither elected by the residents nor the government. James Hayes, 'Hong Kong's Chinese associations: Their ceremonial occasions and their helpers', 42 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 2002, pp.67-99. In Lethbridge words, they just claimed for themselves a leadership status as civic minded and paternalistic citizens. Henry Lethbridge, *Hong Kong: Stability and Change, a Collection of Essays*, Hong Kong: Oxford University Press, 1978, pp.48-59. Nevertheless, the Kaifongs constituted the 'democratic' basis for the internal self-control system of Chinese community.

⁷⁴ Such as "Observations by the Registrar General", dated 8 April 1867, enclosed in despatch no.350 from MacDonnell to the Duke of Buckingham, 10 August 1867, CO129/124, p.111. Also see G.B. Endacott, *Government and People in Hong Kong*, Hong Kong: Hong Kong University Press, 1964, p.103.

⁷⁵ Endacott, 1964, p.184.

⁷⁶ I-ts'z (yici in mandarin, 义祠), usually a common ancestral hall. In early 1850s, the Kwong Fook (Guangfu in mandarin, 广福 literally, 'wide benevolence') an I-ts'z was established by Chinese inhabitants in Hong Kong. This I-ts'z soon developed into a place for receiving dying Chinese due to the lack of a Chinese hospital for the sick. One day in July 1869, the Colonial Surgeon inspected the I-tsz and discovered some dying people living in a room where a corpse had been deposited. He reported this issue to the Registrar General. The filthy and miserable conditions inside the I-tsz were made public. Under the resulting pressure from local press and the Colonial Office in London, the colonial government started to realize the necessity to have a

After its establishment in 1870, the Tung Wah Hospital rapidly developed into an omnipotent eleemosynary institution looking after Chinese welfare.⁷⁷ By doing so, the Chinese enhanced their Chinese way of sanitation.⁷⁸

In the late 1870s, a cry for public health reform broke out. But how should the reform carry on, more Chinese or English? The Europeans continued to urge a strict western approach. But Sir John Pope Hennessy stood with the Chinese elites, opposing the imposition of western sanitary standards upon Chinese inhabitants.⁷⁹ The Colony was split on the issue of public health. As a result, the development of sanitary laws stopped.⁸⁰

With the intervention of the British Government, the reform of Hong Kong's sanitary laws started. Mr. Osbert Chadwick, an expert on drainage and sewers, the son of Sir Edwin Chadwick was dispatched from London to Hong Kong to make a thorough investigation of Hong Kong's public health situation.⁸¹ It was mainly based upon Chadwick's report that

hospital to care for the sick among local Chinese. The Tung Wah hospital was subsequently set up. The Tung Wah was a free hospital established under the Tung Wah Incorporation Ordinance No.3 of 1870 'for the treatment of the indigent sick among the Chinese population' (section 3). For details of the I-Ts'z scandal and the origin of the Tung Wah Hospital, see Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*. Hong Kong: Hong Kong University Press, 2003, Chapters 1-2.

⁷⁷ Its charitable works other than free medical treatment include education, disaster reliefs, detected lost and cheated Chinese, looking after old people's welfare and so on. For more details of Tung Wah's charitable work, see Tung Wah Group of Hospitals, *One Hundred Years of the Tung Wah Group of Hospitals, 1870-1970*, Hong Kong: the Tung Wah Group, 1971; Puiyin Ho, *Yuan yu Liu: Dongwa yiyuan de chuangli yu yanjin (Source and Stream: the establishment and evolvement of the Tung Wah Hospital)*, Vol. 1, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2009; Puiyin Ho, *Shi yu Shou: cong jiji dao dingqi fuwu (Giving and Receiving: from emergent relief to periodic services)*, Vol. 2, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2009. Hon-ming Yip, *Donghua yizhuang yu huanqiu cishan wangluo: dang 'an wenxian ziliao yinzheng yu qishi (Tung Wah Coffin House and Its Global Charitable Networks: the evidence and inspirations from Tung Wah Archives)*, Vol.3, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2009.

⁷⁸ See Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*, Hong Kong: Hong Kong University Press, 2003, P.199.

⁷⁹ Sir John Pope Hennessy, as the governor from April 1877-March 1882, had been described as left-wing and accused of being too 'pro-Chinese'. See *The Governor's Report on The Blue Book*, by John Pope Hennessy, 29th April, 1881. Also see David Lambert & Philip Howell, 'John Pope Hennessy and the Translation of 'Slavery' between Late Nineteenth Century Barbados and Hong Kong', in 55 *History Workshop J.* 2003. Kate Lowe & Eugene McLaughlin, 'Sir John Pope Hennessy and the 'Native Race Craze': Colonial Government in Hong Kong, 1877- 1882', 20 *J. of Imperial and Commonwealth History*, 1992.

⁸⁰ A quick look of the Appendix 1, we can see that during Hennessy's five year government (1874-1879), not a single law relating on public health was passed.

⁸¹ Osbert Chadwick (1844-1913), was a distinguish engineer, the elder son of Sir Edwin Chadwick, who was one of the famous pioneer of British public health movement in the 1830-40s. Osbert Chadwick was sent by British Government to investigate Hong Kong's sanitary conditions. His report on Hong Kong's sanitation of 1882 is the milestone in Hong Kong's public health development. See Osbert Chadwick, *Report on the Sanitary Condition of Hong*

Hong Kong had its first public health law in a modern sense, viz. The Public Health Ordinance No.24 of 1887.⁸² A Sanitary Board was set up to administrate the said Ordinance. However according to the contemporary comments, if the suggestions of the Sanitary Board were all carried out “many Chinese would be homeless, or forced to sleep into streets”.⁸³ The law was passed, but objected to by the Chinese community, remained dead letters.

4.3 The plague came, law triggered, 1890s-1900s

The 1894 plague dramatically changed the context and trajectory of Hong Kong’s public health development.

First, dormant public health laws were triggered. To fight against the plague, various measures under the Public Health Ordinance No.24 of 1887 were activated, such as the quarantine of patients, in-home visitation and disinfection. These normal sanitary measures against epidemics were however completely strange to the then Chinese community. The intrusion of European soldiers into Chinese houses frightened local Chinese residents out of their wits.⁸⁴ As will be seen in Chapter 4, the plague triggered the law and intensified the tensions between the colonial government and Chinese community.

Secondly, laws of a dramatic character were passed. When the plague came, the Chinatown of Taipingshan soon fell to be the plague centre and supplied more than fifty percent of the plague-stricken patients in 1894.⁸⁵ Indeed, as early as the year of 1874, the Colonial Surgeon had predicted an epidemic in the filthy Taipingshan district.⁸⁶ The houses there were small, dark and overcrowded, some of them were totally unfit for human habitation. The plague seemed to verify the link between insanitary houses and epidemics. To prevent the plague, laws of dramatic characters were introduced. The Taipingshan Resumption Ordinance No.8 of 1894 endowed the colonial government wide power to resume insanitary houses in Taipingshan district. The Closed Houses and Insanitary Dwellings Ordinance No.15 of 1894 greatly increased the power of Sanitary Board to deal with insanitary houses. The Building (Amendment) Ordinance No.7 of 1895 enabled the

Kong, 1882, original with file reference: Public Record Office, C.O.882

⁸² *HKGG*, 2 June 1888.

⁸³ Bruce Shepherd, *The Hong Kong guide 1893*, Hong Kong (China); Oxford: Oxford University Press, 1982, With an introduction by H. J. Lethbridge, P.70.

⁸⁴ From the perspective of many Chinese, these efforts to avoid inspections prevented domestic invasions by foreigners, as well as the western medical treatment at the hands of foreigners. See E.G. Pryor, ‘The Great Plague of Hong Kong’, in *15 Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1975, pp. 61-70.

⁸⁵ *Report from the Permanent Committee under the Sanitary Board*, dated 28 June 1894, *HKH*, 27th August, 1894.

⁸⁶ See Dr. Ayers’ Report dated 19 January 1894.

Director of Public Works to supervise house constructions and to abate certain sanitary nuisances. The Insanitary Properties Ordinance No.34 of 1899 laid down detailed and strict requirements for cubicles, building heights, open spaces, etc. As these laws imposed strict restriction upon private properties, the rights of landowners were seriously infringed. One can fairly conjecture that without the threat of plague, these dramatic ordinances could hardly be passed. How to balance the interests between public health and private rights is one of the main topics explored in Chapter 5.

Thirdly, the bubonic plague elevated western medical science to such a height that the tolerance of ‘dangerous’ and ‘backward’ Chinese traditional medicine became impossible. As mentioned above, that the establishment of an indigent hospital of the Tung Wah Hospital was to meet Chinese prejudice against western medicine. Since at that time, Chinese only believed in the effect of Chinese medicine. However, in the view of western medical professionals, Chinese medicine was completely ineffective in dealing with the bubo disease. Therefore, ‘stubborn’ Chinese adherence to traditional medicine and the Tung Wah’s interference with treatment constituted obstructions to the government’s western-style approach to the plague. To win the battle against the plague, the colonial government decided to replace the ‘backward’ Chinese medicine by scientific western medicine. The Tung Wah hospital subsequently became an important reform target. Tung Wah’s westernisation and the legal implication of its westernisation will be fully discussed in Chapter 6.

4.4 Towards professionalisation, 1910s-1930s

Despite dramatic measures were taken, the plague kept re-visiting the colony. Accumulated by time and experience, the colonial government gradually realized that there was no simple solution to public health problems. Actually, public health was an integrated part of broad social, economic and cultural systems. Correspondingly, public health laws while bearing a clear vision for health improvement should also keep open to concrete social conditions. For instance, the surge of Chinese population at this period rendered the abatement of in-house overcrowding almost impossible.⁸⁷ Under stringent social conditions, a strict enforcement of the Public Health and Building Ordinance No.1 of 1903 could only encourage corruption and irregularities in administration.

The changes in social attitudes and social conditions in the 1910s and 1920s encouraged more enlightened views of public health regulation. The overthrow of the Qing dynasty in 1911 and the subsequent establishment of Republic of China fostered an ethos of nationalism and anti-imperialism among Chinese subjects in Hong Kong. The colonial

⁸⁷ Chinese population almost tripled from 329,920 to 1,026,645 between the years 1910 and 1939. See the census in Appendix 3 ‘Hong Kong Population from Sanitary and Health Reports, 1900-1940’.

government enhanced its cooperation with conservative Chinese elites and relied upon Chinese Confucian values of obedience and fealty as antidote to the growing nationalism among Hong Kong Chinese.⁸⁸ However, Chinese society after the First World War became increasingly heterogeneous. The large scale strikes in the 1920s pushed the colonial government taking serious reforms concerning the welfare of Chinese working class.⁸⁹ It was against this backdrop that the public health reforms took place in the 1930s, reforms towards professionalisation and humanitarianism. A complex of public health laws was set up whereby Chinese subjects were no longer the target of regulation but beneficiary of improved public health conditions and urban development. After nearly a hundred years of colonial rule, a public health legal framework in a modern sense was finally set up.

However, the modernisation of Hong Kong's public health laws was not without local cost. Supported by public health laws, western medicine became more and more dominant in Hong Kong. Chinese medicine on the other hand became more and more marginalized. Why Chinese medicine had to be excluded from the medical laws? By investigating medical legislation in colonial Hong Kong via a socio-historical perspective, Chapter 6 highlights the role of law during the colonial expansion of western medicine in a Chinese community.

Furnished by these social-historical knowledge, we can better understand the four major case studies which are examined in the following core chapters.

⁸⁸ Rongfang Cai, *Xianggang ren zhi Xianggang shi, 1841-1945 (The Hong Kong people's history of Hong Kong, 1841-1945)*, Hong Kong: Oxford University Press, 2001.

⁸⁹ David Faure, *Society, A Documentary History of Hong Kong*, Hong Kong: Hong Kong University Press, 1997.

Chapter Three

Body Controls: A critical case study of the Contagious Diseases Laws

Amidst much controversy, Hong Kong introduced the Venereal Diseases (VD) Ordinance of 1857 in order to protect the health of imperial soldiers and sailors, and also arguably to protect Chinese prostitutes from a life of so-called ‘brothel slavery’. Several years later, the British Government introduced the Contagious Diseases (CD) Act of 1864 at home for the explicit object of protecting soldiers’ health.¹ Owing to strong protests from the British public, the CD Acts were fully repealed in 1886. Supported by both European and Chinese communities in the colony, Hong Kong’s CD legislation, however, continued in force right through to the middle of the 1930s.

Why did the public react so differently towards the CD legislation as between Britain and colonial Hong Kong? For what reasons were the CD laws retained in Hong Kong for such a long period of nearly eighty years? This study argues that the different experience of the CD legislation between Britain and colonial Hong Kong can be best explained through a legal culture perspective.

This Chapter comprises three parts. The first looks at the historical setting, gives a concise account of the development of Contagious Diseases (CD) laws both in Hong Kong and Britain in the 19th century. The second introduces the controversies which led to the abolition of the CD Acts in the U.K and looks at the factors which in contrast encouraged Chinese support for such legislation in colonial Hong Kong. Why did the experience of broadly similar CD legislation differ so dramatically as between Britain and in colonial Hong Kong? Informed by the concept of legal orientalism, the third part examines the situation from the perspective of the Chinese residents of Hong Kong. The final abolition of Hong Kong’s CD legislation in the mid-1930s to some extent signals the triumph of legal orientalism, a point which will be touched on briefly in the end of this chapter and again in the concluding chapter to this dissertation.

1. Legislative control of the contagious diseases, 1850s -1860s

¹ Between 1864 and 1869, the British Parliament introduced four laws, known as the Contagious Diseases Acts. The 1864 Act was replaced by that of 1866. The most significant addition to the 1866 Act was that which made periodical examination of all prostitutes within specified areas obligatory. The 1868 Act merely changed a number of technical details of the previous laws. The 1869 Act extended the number of military stations, garrison and seaport towns from 11 to 18 and enlarged the area around the subjected stations, in which a woman could be arrested, from 5 to 15 miles. For a vivid and concise account of British CD Acts see Margaret Hamilton, ‘Opposition to the Contagious Diseases Acts, 1864-1886’, 10 *Albion: A Quarterly Journal Concerned with British Studies*, 1978, pp.14-15.

In the heyday of western imperialism, once a social problem in an 'Oriental' society was identified, colonists often assumed responsibility for indigenous people and prescribed remedies, which were often in the form of law. Yet the 'problem' identified by western colonists might not be seen as a problem by members of the Oriental societies themselves. In this section, we will see how the colonists' perceived problem of Chinese 'brothel slavery' justified the Hong Kong's first CD legislation, namely the Venereal Diseases Ordinance No.10 of 1857.

1.1 Chinese 'brothel slavery' as a justification for the CD legislation

China's defeat in Opium Wars in 1842 and 1856 impoverished that country and accelerated the coolie trade via Hong Kong which also boosted prostitution in this port as a result of serious gender imbalance problems.² By the 1850s, Hong Kong was already notorious for the prevalence of venereal disease. As the Colonial Surgeon complained 'almost every sailor admitted into the Seamen's Hospital with fever, bowel affection, etc., is also affected with the venereal'.³ Urged on by the naval and medical authorities, a venereal diseases bill was prepared.⁴

At first, the colonial government was very reluctant to introduce the VD ordinance, as some legislators protested that such a public sanction of prostitution, like the issue of gambling licensing, was morally unacceptable.⁵ The legislators also worried that the wide powers in the hands of police force in prosecuting prostitutes and brothel keepers 'tended to no result but the incurable venality of the police', since the police would 'receive payments from every house as the price of silence and it would be impossible to organize a police force impervious to bribery'.⁶ Taking account the dissatisfying performance of the then police force in Hong Kong, the legislators' worries about the growth of police corruption under the new ordinance were not without some good reasons.⁷

But the British Government insisted that the proposed VD ordinance would not only protect soldiers' health but also serve to protect those poor Chinese prostitutes from sexual slavery. Labouchere, in his despatch to Governor Bowring wrote,

² A. Chin, 'The Management of Women's Bodies: Regulating Mui Tsai and Prostitutes in Hong Kong under Colonial Rule 1841-1935', 1 *E-Journal on Hong Kong Cultural and Social Studies*, 2002, pp.1-2.

³ [Colonial Surgeon's letter in supporting the proposed Venereal Diseases Ordinance], dated 7 April 1856, enclosed in despatch from Bowring to Labouchere, 2 May 1856, CO129/55, p.267.

⁴ From Cain to Russell, 18 May 1855, CO129/50, p.73.

⁵ 'Remarks on the Draft Ordinance 'for the better repression of certain diseases' by C. B. Hillier, a Member of the Legislative Council', dated 30 April 1856, enclosed in despatch from Bowring to Labouchere, 2 May 1856, CO129/55, pp.259-263.

⁶ Ibid.

⁷ The police force was reported as 'a costly, dislocated and insufficient body' and urged upon heavy reform. From Bowring to Russell, 4 September 1855, CO129/51, p.242.

The colonial government has not, I think, attached sufficient weight to the very grave fact that in a British Colony large numbers of women should be held in practical slavery for purposes of prostitution, and allowed in some cases to perish miserably of disease in themselves to belong. A class of persons who by no choice of their own are subjected to such treatment have an urgent claim on the active protection of Government.⁸

Although this presumption of ‘brothel slavery’ turned out to be not so correct several years later when European colonists had obtained a better knowledge of Chinese prostitution, at this time, the claim of a serious issues of Chinese brothel slavery lent a fresh impetus to introduce the controversial VD ordinance.⁹ And indeed, this Orientalist portrayal of Chinese ‘brothel slavery’ became a powerful vindication for Hong Kong’s CD legislation, not only at this stage, but also in the late 1870s, the 1880s, and through to the 1920s whenever moral criticisms were raised against CD and brothel laws. Owing to the importance of the orientalist discourse of ‘Chinese slavery’ upon the development of Hong Kong’s CD legislation, this study takes extra efforts to investigate the original authority where Labouchere generated his above assertion.

On a closer scrutiny of the ‘valuable communications’ which Labouchere had given ‘best attention’ to make his decision, this study finds that Labouchere’s assertion of Chinese ‘brothel slavery’ almost exclusively relied upon a document written by J. F. Edger, an unofficial member of the Legislative Council.¹⁰ Due to its unexpected influence upon British Government’s decision, Edger’s comments on the draft VD Ordinance are cited and analysed in some detail below. At first, like many other European colonists, Edger had ‘a feeling of repugnance’ to such legislation. But after his careful reflection on the information presented by the medical men, he was persuaded for the necessity of establishing regulations to ‘check, if not to prevent the evil [venereal disease].’ Edger then suggested to establish these

⁸ Labouchere to Bowring, 27th August 1856, CO129/55, pp.233-235.

⁹ ‘[Chinese] prostitution in the colony and its attendant evils’, enclosure to despatch from Cain to Russell, 18 May 1855, CO129/50, pp.75-77. ‘Minute of the undersigned [J.F.Edger] on perusal of a Draft Ordinance for the better repression of certain diseases’, dated 23 April 1856, enclosed in despatch from Bowring to Labouchere, 2 May 1856, CO129/55, pp.265. On a close examination of these correspondences, this study finds that the claim of Chinese ‘brothel slavery’ was rather more a speculation than it was the fact. Here Chinese practice of selling and buying girls for prostitution was deemed by many European colonists as human trafficking, similar to the ‘negro’ slavery trade. This orientalist view of Chinese prostitution was later rectified by Governor Hennessy’s government (1877-1882).

¹⁰ ‘Minute of the undersigned [J. F. Edger] on perusal of a Draft Ordinance for the better repression of certain diseases’, dated 23 April 1856, CO129/55, pp.264-266. J. F. Edger was elected by the Justices of the Peace as a member of the Legislative Council in 1849. Being a man ‘in every way qualified for seats in the Legislative Council of the Colony,’ Edger was expected by the public to exert his power – though limited only to advice – for an ‘independent expression of opinion [...] upon any subject of importance to the community.’ Edger died in Shanghai in 1857 at the age of fifty-five. From Norton-Kyshe *The History* supra note 9, pp.261, 287 and 449.

regulations in a Chinese context,

The brothels are kept almost exclusively by Chinese. They have no shame as regards the immorality of keeping or visiting brothels, therefore, in dealing with these establishments here, which unhappily are very numerous, we need be less scrupulous as to the inquisitorial nature of proceedings for their regulation, than we should necessarily be in England.¹¹

The above account of Chinese ‘immorality’ to some extent justified the deviation from benevolent English governance to martial laws. Once convinced himself the necessity of applying stringent laws upon ‘shameless’ Chinese, Edger went on to comment the draft ordinance,¹²

Of the general tenor of the Draft Ordinance now before me I approve.

But it appears to me that section II awards too heavy a penalty on the offender, if a female, **because the unfortunate prostitutes here are in the position of slaves** [emphasis added], having mostly, if not all, been bought...for the ulterior purpose of prostitution for the benefit of their purchasers, whose property they are taught to consider themselves to be. [...]

Therefore as the prostitute would not have the means of paying the specified pecuniary penalty, imprisonment for an indefinite term would be her doom, whereas the brothel-keeper, upon whom the punishment ought properly to fall, would escape so far as relates to this section.

Under Section III the brothel keeper might be punished, but very inadequately, in respect to the moral offence, as compared with the punishment awarded in the previous section to the unhappy prostitute. [...]

Analysed as orientalist discourse, Edger’s comments on the draft ordinance accomplished two important points: first, the prevalence of Chinese ‘brothel slavery’ cried out for humanitarian intervene from the government;¹³ secondly, the ‘cruelty’ of Chinese brothel keepers demanded a response in the form of stringent regulation and heavy penalties.¹⁴ Although neither of the two issues was characterised as a serious ‘problems’ by

¹¹ ‘Minute of the undersigned [J. F. Edger] on perusal of a Draft Ordinance for the better repression of certain diseases’, dated 23 April 1856, CO129/55, p.265.

¹² Ibid.

¹³ Here Edger’s description of Chinese ‘brothel slavery’ is indeed one of the typical orientalist interpretations of Chinese custom of buying and selling persons for concubinage, domestic service, adoption. In her studies on the role of Chinese local leadership, Sinn emphasizes that many of Chinese customs such as selling and buying women were not the same thing as the European-American ‘negro’ trade, but rather institutions dealing with social and family problems like poverty, and succession to descent lines in a manner consistent with Chinese patriarchy and Confucianism. E. Sinn, ‘Chinese Patriarchy and the Protection of Women in Nineteenth-Century Hong Kong’ in M. Jaschok & S. Miers eds., *Women and Chinese Patriarchy: Submission, Servitude, and Escape*, Hong Kong: Hong Kong University Press, 1994, p.141. Yet the discourse of oriental slavery continued to proliferate and exerted tremendous power for imperial policy-making. For some critical analyses of the English discourse on Oriental slavery, see G. Prakash, *Bonded Histories: Genealogies of Labor Servitude in Colonial India* Cambridge Press, 1990. S. Pedersen, ‘The Maternalist Moment in British Colonial Policy: The Controversy over ‘Chinese slavery’ in Hong Kong, 1917-1941’, *171 Past and Present*, 2001, pp.162-163.

¹⁴ Surely not all brothel-keepers were ‘cruel and greedy’. As some colonial officials

the then Chinese community, Labouchere himself took the information very earnestly indeed. In his subsequent despatch, he specifically instructed Bowring to protect those 'unfortunate creatures' by the proposed VD Ordinance.¹⁵ The Secretary of State's humanitarian concern over Chinese women was soon proved more efficient than the medical discourse. In December 1857, Bowring was able to report that 'the Ordinance for checking the spreading of the Venereal Diseases was passed without a dissenting vote.'¹⁶ But strangely enough, despite the claiming the existence of a serious problem of brothel slavery, when the VD ordinance No.10 of 1857 was actually passed, not a single provision provided definite protection for the right and liberty of Chinese prostitutes.¹⁷ The brothel licensing and inspection system and the compulsory medical examination system introduced by the said ordinance was designed for a better check and control of venereal diseases, particularly to protect the health of European colonists.

Although the VD Ordinance No.12 of 1857 did not impose any racial segregation in its text, registered brothels were in practice classified into two groups, one for Europeans the other for Chinese, only the prostitutes used by European were subjected to medical examination. The Registrar General observed that such segregation worked quite well. Since Chinese at that time were very scared of being treated by western medicine, the majority of Chinese prostitutes (around 80%) were only too happy to be free from 'western' medical examination and left alone to be treated by Chinese traditional medicine. Brothel segregation

acknowledged several years later, 'there is nothing known of them [brothel keepers] further than that nothing is known against them, and they are supported by capitalists.' In some historians' opinions, the majority of brothel keepers were women seeking financial independence and often risked bankruptcy as the colonial laws were not in favour in protecting their interests. E. Sinn, 'Women at Work: Chinese Brothel Keepers in Nineteenth-Century Hong Kong,' 3 *Journal of Women's History* 19, 2007, pp.87-111. But Chinese brothel keepers continued to be deemed 'a horrible race of women, cruel to the last degree.' The negative image of brothel keepers prevailed in either English or Chinese normative discourse, mainly from moral considerations. In this situation, such moral charges against brothel keepers also serve to justify the rigor of the proposed CD legislation. For some detailed introduction of Chinese brothel keepers see *Report on the Commissioners appointed by His Excellency John Pope Hennessy, C. M.G., Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies to enquire into the working of 'The Contagious Diseases Ordinance, 1867' Together with an Appendix containing minutes of evidence taken before the commission, official correspondence, returns, &c., &c.* (hereafter the 1879 Commission Report), pp.46-47, Appendix at 2, 7, 12, 15, 20, 22. This Report (without Appendix and Evidence) is replicated in *Parliamentary Paper, House of Commons*, 1880 (118).

¹⁵ Labouchere to Bowring, 11 August 1857, CO129/62, pp.475 and 481.

¹⁶ Bowring to Labouchere, 2 December 1857, CO129/65, p.98.

¹⁷ Sections 7 and 10 of Ordinance No.10 of 1857 empowered the Register General, Inspector of Police to visit and inspect the condition of registered brothels, but not specified the exact purpose of such inspection was to check ill treatment of prostitutes or not. The vague definition of policing power to some extent encouraged the corruption among brothel inspectors a point will be mentioned later. The VD Ordinance No.10 of 1857 was published in the HKGG, 28 November 1857.

was strictly enforced to ensure Europeans would not experience intercourse with un-checked Chinese prostitutes.¹⁸

As a result of this legal protection, the venereal diseases among troops dropped from a 'most common' incidence to a 'comparatively rare occurrence' according to the Colonial Surgeon's reports.¹⁹ But no report or investigation had ever been made on the actual status and medical situation of Chinese prostitutes under the Ordinance No.12 of 1857. It seems that once the major object of protecting soldiers' health was achieved, no one was interested in care the health and wellbeing of Chinese prostitutes. Labouchere's humanitarian concern over Chinese prostitutes therefore remained purely one of 'good intentions'.

1.2 British CD Acts and HK's CD Ordinance

In 1864, with similar purposes in mind to protect soldiers' health, the British Government introduced its first Contagious Diseases (CD) Act as an experiment to last three years. On 30 September 1866, the CD Act 1864 was replaced by the CD Act 1866 which was later revised as the CD Act 1869. British CD Acts did not use a brothel registration and inspection system to facilitate compulsory medical examination system, but by identifying so-called 'common prostitutes' was intended to protect soldier and sailors' health in twelve garrison towns and ports. Following these changes to United Kingdom legislation, in 1867 Hong Kong repealed the Venereal Diseases Ordinance and introduced a new Contagious Diseases Ordinance No.10 of 1867.²⁰

Compared with the regime created by the British CD Acts, prostitution in colonial Hong Kong was more strictly regulated. First, as mentioned above, the CD Acts did not establish brothel registration and inspection system, while in Hong Kong, every legitimate brothel had to be registered as operating within certain districts and to pay a monthly licensing fee of \$4 (section 18 of the CD Ordinance No.10 of 1867). Keepers of unlicensed brothels (so-called 'sly brothels') were liable to a fine not exceeding \$500 or imprisonment for a period less than six months with or without hard labour (section 21 of the CD Ordinance No.10 of 1867). Secondly, the administrative cost of the CD legislation was shared by different subjects. In Great Britain, the expenses incurred in the execution of the CD Acts were paid by British Military Authorities (section 5 of the CD Act 1866). In Hong Kong, the same expenses were largely defrayed by the income from fines and brothel licence fees and payments collected under the Ordinance No.10 of 1867 (section 64 of the Ordinance No.10 of 1867), and partly by payments made by the colonial military authority. Perhaps

¹⁸ 'Observations by the Registrar General', dated 8 April 1867, enclosed in Despatch No.350 from MacDonnell to the Duke of Buckingham and Chandos, 10 August 1867, CO129/124, pp.111-112.

¹⁹ 'Colonial Surgeon's Report for the year 1862', in *Hong Kong Sessional Papers for 1862*.

²⁰ The CD Ordinance No.10 of 1867, HKGG, 27 July 1867.

owing to this financial support difference, the penalties imposed upon Hong Kong's prostitutes under the Ordinance No.10 of 1867 were much heavier than the CD Act 1866. In the case of CD Act 1866, no fine was inflicted upon common prostitutes but only imprisonment of a period usually not exceeding one month (sections 28 and 31 of the CD Act 1866). While in Hong Kong, outdoor prostitutes or those found in unregistered brothels were subjected to a maximum fine from HK\$25 to HK\$50 as an alternative to the imprisonment not exceeding three or six months (sections 24, 30-31 of the Ordinance No.10 of 1867). The CD Act offered free medical treatment for prostitutes and for those discharged from the hospitals upon fully recovery, expenses of women's return home also provided by the government (section 27 of the CD Act 1866). Under the CD Ordinance No.10 of 1867, the expenses incurred in the treatment of prostitutes in the hospital were paid by the brothel keepers (section 40 of the Ordinance No.10 of 1867). Although in theory it was free for the diseased prostitutes, in practice, as the recovered prostitutes had to go back to work in the same brothels as before, it would be easily for the brothels keepers to charge the fees from those poor prostitutes.

Despite the fact that Chinese prostitutes in Hong Kong were under more stringent regulation than their counterparts in Britain, it was the British public that first protested such oppressive CD legislation against vulnerable prostitutes. Pressed by the British public, the CD Acts were abolished in 1886. But when Hong Kong was instructed to repeal the CD Ordinance, no one in the Colony, including the Chinese community, wanted to follow this policy. Actually, supported by the colonial authorities and the general Chinese public, the CD legislation remained in force until the 1930s. Why the same kind of CD legislation did stirred so different public reactions between Britain and colonial Hong Kong? In order to resolve this puzzle, the following section tries to put the CD legislation in broader social contexts, and observe it through a comparative legal cultural perspective.

2. Controversies of the CD legislation

In Britain, the introduction of the CD Acts was coincidentally with the emergence of feminist movements. Under the pressure of British liberals and feminists, British CD Acts were rescinded in the middle of 1880s. Taking account of the possible good effect of the CD laws to protect public health, the final success of the anti-CD regulation campaign can be better understood against British liberal legal tradition and culture.

2.1 Controversies of the CD Acts in Britain

In the United Kingdom, when the third and final CD Act of 1869 was being prepared in Parliament, a prodigious anti-CD regulation movement gathered steam throughout the

country.²¹ The CD legislation was firstly protested against on moral grounds. ‘For the first time in our history’, some asserted in the Parliament, ‘prostitution has become a ‘legalized institution’ –a woman is made a chattel for the use of men’.²² John Stuart Mill contended that the compulsory medical examination would ultimately impair social mores, since it lowered the threshold of individual responsibility for careful sexual practice or chastity.²³ When his Liberal Government lost election in 1874, James Stansfeld, a former Cabinet Minister led the anti-regulation campaign. Under Stansfeld’s leadership, the antis started to apply statistics to disclose the inefficiency of the CD laws in removing the problem of syphilis and gonorrhea among troops.²⁴

The most appealing charge against the Acts might be the accusation of violating the liberty and constitutional right of English women. Josephine Butler, the leading feminist in the anti-regulation campaign said that the Acts which permitted women to be arrested and committed to a hospital for several months were contrary to Articles 39 and 40 of the Magna Carta which stated that no freeman could be denied his freedom without a proper trial.²⁵

In the face of the opponents’ fearsome attacks, supporters of the Acts nevertheless showed no weakness. It was argued that the CD legislation had actually improved social mores by cleaning up streets and deterring young girls so that they kept away from prostitution.²⁶ Supporters insisted venereal diseases which cost the tax-payers dearly had greatly decreased at the garrison and seaport towns subject to the CD Acts.²⁷ The assertions of the ‘antis’ that the CD legislation had brutalized prostitutes agitated more defensive responses from the supporters, who argued that the CD legislation actually bettered the lives of prostitutes, since the Acts narrowed competition and the clean certificate given helped to raise their self-esteem. It was observed that diseased prostitutes even traveled to protected areas in order to receive free medical treatment.²⁸

It seems both sides were deeply entrenched with their respective assertions. As contemporaries we can hardly judge which side had more weight over the other. But one thing is for sure, namely, that under the fierce attack of feminists and liberalists, the CD Acts were gradually gaining the notoriety of promoting ‘state-regulated vice’,

²¹ M. Hamilton, ‘Opposition to the Contagious Diseases Acts, 1864-1886’, 10 *Albion: A Quarterly Journal Concerned with British Studies*, 1978, pp.14-27, p.15.

²² *The Parliament Debates (Hansard): Official Report*, vol. 201, 24 May 1870, p.1322.

²³ ‘Report of Royal Commission upon the administration and operation of the Contagious Diseases Acts’ in *Parliamentary Papers 1871* [C.408], p.729, Question 19999.

²⁴ Hammond and Hammond, *James Stansfeld, a Victorian Champion of Sex Equality*, London, New York: Longmans, Green and Co., 1932, p.191.

²⁵ J. Butler, *The Constitution Violated*, Edinburgh, 187, p.7, quoting Hamilton, 1978, p.17.

²⁶ *The Times*, 25 May 1870.

²⁷ Hamilton, 1978, p.20.

²⁸ F. Smith, ‘The Contagious Diseases Acts Reconsidered’, in 3 *Social History of Medicine*, 1990, pp. 203, 208-209.

The shameless violation of the most sacred personal rights of the weak, in the vain attempt to secure the pleasures of salubrious debauchery for the strong, is the logical outcome of every system of state regulated, organized and patented vice.²⁹

The spirit of British public was ignited by antis' eloquent and powerful charges against the CD legislation. By the year 1881, 10,315 petitions containing a total of 2,015,404 signatures had been signed in order to oppose the CD Acts. In contrast, only forty-five petitions supported the law.³⁰ The CD legislation gradually became a useful electoral stick to beat those in favour of 'state-regulated vice'. The first Parliament candidate sacrificed for his strong support for the Acts was Sir Henry Storks, a liberal candidate for Colchester during the 1870 election.³¹ By the early 1880s, the opinions of the 'antis' had dominated parliamentary debate. In 1883, Stansfeld's motion in support of stopping compulsory medical examination was supported by a vote of 182:110, which effectively emasculated the CD Acts. In 1886, the CD Acts came to a halt and were replaced by voluntary schemes of CD control.³² Subsequently, any attempt to re-introduce the CD legislation would be deemed politically impossible, as it had become a marker of the tenor of public opinion and the likelihood of political success.³³

2.2 Controversies over the CD Ordinance in colonial Hong Kong

Compared with the controversy at home, the CD Ordinance in Hong Kong evoked little overt negative response. If the 1877 tragedy had not happened, the adverse effects of the CD Ordinance upon lower class Chinese subjects, particular Chinese prostitutes, might never have been brought to light. In October 1877, two Chinese women were killed by falling from the roof of a house. They were on the rooftop in an attempt to escape from the police, who had broken into the house on the ground that it was an 'unlicensed' brothel.³⁴ It was soon found out that the case involved informers paid by the Registrar-General, and whose job was to induce Chinese women to prostitute themselves and thus bring them under the penal clauses of the CD Ordinance.³⁵

²⁹ [Author unknown], *Lord Kimberley's Defence of the Government Brothel System at Hong Kong, with an introduction by the Rt. Hon. James Stansfeld MP* (hereafter *Lord Kimberley's Defence*), [London]: the National Association for the Repeal of the Contagious Diseases Acts, 1882, pp.3-5.

³⁰ Hamilton, 1978, p.24.

³¹ Hamilton, 1978, p.25.

³² For a vivid description of the influence of anti-CD Acts movements and the effect of CD control under voluntary schemes, see J. Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* Cambridge: Cambridge University Press, 1980, pp.253-255.

³³ P. Levine, 'Modernity, Medicine, and Colonialism: The Contagious Diseases Ordinances in Hong Kong and the Straits Settlements' in *6 Positions: East Asia Cultures Critique*, 1998, p.686.

³⁴ *China Mail*, 31 October, 1877.

³⁵ *Parliamentary Papers (PP)*, 1880 (118), pp.6, 8, 11.

Sir John Pope Hennessy, who had newly arrived in Hong Kong as Governor was shocked by the 'loathsome purpose' of the paid informant system and put an immediate stop of this system.³⁶ Meanwhile, a Commission was appointed by Hennessy to enquire into the working of the CD Ordinance No.10 of 1867. After more than one year's diligent investigation, this Committee submitted a lengthy report which concluded that the CD Ordinance No.10 of 1867 was a total failure and suggested to abolish the said CD Ordinance and its appended brothel regulations.³⁷

According to the Commission's investigation, the sanitary effect of the CD Ordinance for the prevention of venereal diseases was exaggerated by European medical officers. Since the sanitary rules only applied to brothels frequented by Europeans, the health of majority prostitutes (about four-fifths) were laid in the hands of Chinese style medical practitioners. After investigating some Chinese doctors in Hong Kong, the Commissioners obtained some valuable information which had been omitted or unnoticed by European medical officers. For instance, Chinese 'are perfectly alive to the necessity of taking precautionary measures against [venereal] diseases'.³⁸ The Registrar General and some senior police inspectors further confirmed that Chinese medicine was effective to cure venereal diseases, particularly in their early stages.³⁹ Compared to the western medical approach, which imposed isolation and confinement of diseased prostitutes, Chinese medical treatment appeared to be more humane and less intrusive. Thus, the Commissioners recommended replacing the compulsory medical examination by a voluntary medical scheme, where diseased prostitutes could consult either the western doctors or Chinese doctors on their free will.

As mentioned above, the brothel licensing and inspection system was introduced in order to protect poor Chinese prostitutes from being sexual slaves. But in reality, owing to bribery and corruption, the policemen and brothel inspectors acted as 'protectors' of brothel keepers.⁴⁰ The compulsory medical examination further scared those 'wretched creatures'.

³⁶ From Hennessy to the Earl of Carnarvon, 1 November 1877 in *PP*, 1881 [C.3093] p.1, No.1.

³⁷ 'Report of the Commissioners appointed by His Excellency John Pope Hennessy, C. M.G., to enquire into the working of 'The Contagious Diseases Ordinance, 1867', together with an Appendix containing minutes of evidence taken before the Commission, Official Correspondence, Returns. etc.', Hong Kong: Government Printer, 1879 at 63. This report, together with its appendices and evidences, is of nearly 350 pages. It contains valuable information on the then Hong Kong's society, particular Chinese labouring class, whose living conditions and habits are often omitted by formal historical narratives. The main body of the report (without appendices and evidence) is reproduced in *Parliamentary Papers* 1880 (118).

³⁸ *PP*, 1880 (118), p.54.

³⁹ *Ibid.* Even Dr. Ayers, the Colonial Surgeon (1872-1896) who had a strong prejudice against Chinese medicine acknowledged that Chinese medicine could cure some 'simple forms of venereal'. See Answers 1,412 in Evidence to the Commission Report, p.34.

⁴⁰ Mr. May, the experienced Police Magistrate's evidence before the Commission, in *The Commission Report enquiry into the Working of the CD Ordinance No.10 of 1867*, p.46, *Appendix to the Commission Report*, pp.12,15.

As the Registrar General observed that 'new women would almost have preferred going to the whipping post' and 'the mere threat of sending them to examination was generally sufficient to keep them in order.'⁴¹ The colonial government of Hong Kong to some extent had connived with the keepers to utilise prostitutes' dread of western medicine to prevent 'unchecked' Chinese women from canvassing European clients.⁴²

The commissioners also claimed that the CD ordinance had been culturally unfitted to deal with the so-called problem of Chinese brothel slavery. Since Chinese perception of prostitution was quite different from Europeans,

.... [As compared with European prostitution]...The Chinese prostitutes of Hong Kong are an entirely different set of people, differently constituted, under different influences, and in a different position altogether. Those girls who are brought up to the trade of prostitution from infancy do not therefore consider themselves 'unfortunates'. They have the chance, if they are pretty and accomplished, of being made the second, or third, or fourth, or at any rate the favourite wife of some wealthy gentleman.⁴³

Last but not least, the heavy fines inflicted under the provisions of the CD Ordinance placed poor prostitutes in an even more vulnerable situation. During the Commission investigation, it was found that many poor unregistered Chinese prostitutes were willing to work for the miserly price of ten cents.⁴⁴ But if the unregistered prostitutes were caught, they would be charged a fine up to \$50 (section 26 of the Ordinance No.10 of 1867), which was financially very onerous for them. In the case of unlicensed brothel keepers, the maximum fine was \$100 for the first offence, \$200 for the second offence, and \$500 for the third and beyond (section 27 of the Ordinance No.10 of 1867). In the late 1890s, a coolie or artisan's monthly income was about \$5. Against this background we can understand that these fines often drove poor prostitutes into an especially miserable condition. For instance, one of the dead woman in the 1877 tragedy was later found out had been fined \$100 in November 1876 as an illegal brothel keeper and that woman had had to sell her son in order to pay this heavy fine.⁴⁵ As for the so-called free medical treatment provided for diseased prostitutes, since it was brothel keepers who were to pay the medical expenditure, upon recovery from the disease, the brothel keepers often required prostitutes to work several years for nothing in order to pay off the medical cost.⁴⁶ In contrast, the colonial government made profits from

⁴¹ Quoted by Hennessy in his despatch to Kimberley, 15 June 1881 in *PP*, 1881 [C.3093], p.48.

⁴² 'Observations by the Registrar General', dated 8 April 1867, enclosed in Despatch from MacDonnell to the Duke of Buckingham and Chandos, 10 August 1867 in CO129/124, pp.111-112.

⁴³ *PP*, 1880 (118), pp.18-19.

⁴⁴ *PP*, 1880 (118), p.51.

⁴⁵ *PP*, 1880 (118), p.6.

⁴⁶ *PP*, 1880 (118), p.62.

brothel licensing fees and fines under the CD Ordinance No.10 of 1867.⁴⁷

As a result of the above medical, cultural and economic reasons, instead of protecting Chinese women, the CD Ordinance had it would seem actually intensified Chinese brothel slavery,

Whatever good intentions may have been entertained and expressed by Her Majesty's Government, it has been worked for a different purpose from that which Mr Labouchere, in 1856, and your Lordship all along would desire.⁴⁸

Thus Hennessy urged the British Government to repeal the said Ordinance. Hennessy was not alone in his opposition to the CD laws. In Britain, the National Association for the Repeal of the Contagious Diseases Acts also supported his stance.⁴⁹

However, despite fierce protests from colonial Hong Kong and domestic liberal pioneers, the Home Government refused to make any changes to Hong Kong's CD Ordinance 1867. Lord Kimberley, the then Secretary of State for Colonies sent a lengthy despatch defending Hong Kong's CD legislation on the grounds of national defence interest and the necessity of protecting Chinese women and girls.⁵⁰ Kimberley firstly dismissed the Commissioners' charges of the sanitary inefficiency of the CD Ordinance as 'misleading' and inaccurate, since that conclusion was drawn upon Chinese doctors' experience who 'possessed no knowledge of the pathology and treatment of syphilis'.⁵¹ Secondly, Kimberley insisted that this intensification was caused by the poor administration of the law rather than the law per se.⁵² Hennessy's request to abolish the CD legislation therefore failed.

Lord Kimberley's defence of Hong Kong's CD legislation disappointed and to some extent irritated British liberals and feminists at home. In the eyes of the repealers, Kimberley's understatement of the dark side of the CD legislation had only one merit, viz. that it would lead to the downfall of the whole system of state-licensed and patented vice, both in colonies and at home.⁵³ The repealers further warned British Government, that sooner or later, the colonial subjects would fight for liberty following the British liberal tradition,

[T]he people will teach their rulers that in their eyes the safeguards of personal liberty secured to them Magna Charta, the Habeas Corpus and the Bill of Rights, are not the 'dream' which Sir R. MacDonnell declared them to be. Our British

⁴⁷ It was calculated that between 1857 and 1877 inclusive, the actual revenue derived from this source amounted to \$187,508.00. *PP*, 1880 (118), pp.61-62.

⁴⁸ From Hennessy to Kimberley, 13 November 1880, *PP*, 1881 [C.3093], pp.46-47, No. 35.

⁴⁹ In order to obtain public supports to repeal the said Ordinance, once the Commission's report was finished, Hennessy lost no time to publish the report and send copies of the report back to Britain to those might be interested in this topic including James Stansfeld, the leading anti-CD regulation liberal. From Hennessy to Kimberley, 21 June 1880, in *PP*, 1881 [C.3093], pp.34-35, No.29.

⁵⁰ From Kimberley to Hennessy, 26 July 1881 in *PP*, 1881 [C.3093], pp.49-61, No.38.

⁵¹ *PP*, 1881 [C.3093], pp.26, 52-56.

⁵² *PP*, 1881 [C.3093], p.52.

⁵³ *Lord Kimberley's Defence*, p.42.

Constituencies have only to will that the rights won for them by their fathers shall not be filched from them in the dark, and the remedy is in their own hands.⁵⁴

Three years later, this heroic prediction came to true in Britain. But in colonial Hong Kong, things turned to be more dramatic than the British public could ever have imagined. Instead of joining the anti-CD movement, Chinese subjects, particularly members of Hong Kong's Chinese elite, strongly objected to the abolition of the CD laws. In order to understand the reactions of the Chinese residents of Hong Kong, we need to switch from a British focus to a more Chinese perspective, which will be the focus in the section following.

3. Pragmatism versus colonial orientalism

The CD debate in colonial Hong Kong did not lead to the abolition of the said Ordinance but unintentionally brought members of Hong Kong's local Chinese elite forward to participate in the Colony's local public affairs. Instead of joining the anti-CD movement, Hong Kong's Chinese subjects, particular wealthy Chinese strongly objected to the abolition of the CD laws. And even more surprising, supported by Chinese co-operations, the 'dark side' of the CD laws seemed to be illuminated. How did this take place? Why did members of Hong Kong's Chinese elite support this 'suppressive' CD Ordinance? In order to tackle this puzzle, we need to investigate the relevant history from the Chinese residents' perspective.

3.1 Chinese voices on 'Chinese slavery' and the CD legislation

It had been long believed by some European residents that brothel slavery was closely connected with human trafficking in colonial Hong Kong. Many women were induced by specious pretexts to come to Hong Kong but only to find out that they were being sold prostitutes. The brothel keepers were characterized in official reports as a horrible race, cruel to the last degree, yet few of the unfortunate women victims dared to seek protection from Hong Kong's 'foreign' police force.⁵⁵ This perceived Chinese brothel slavery, as mentioned above, gave the British Government some justification in retaining the CD Ordinance No.10 of 1867,

The establishment of the system of licenses and of inspection was a police measure intended to give to the Hong Kong Government some hold upon the brothels, in the hope to improving not only the health condition of the inmates, but also of checking the odious species of brothel slavery.⁵⁶

⁵⁴ *Lord Kimberley's Defence*, p.43.

⁵⁵ The Registrar General's report on Brothel Ordinance, dated 2 November 1866 enclosed in Hennessy's despatch to the Secretary of State, 23 January 1880 in *PP*, p.22, No.1.

⁵⁶ From Kimberley to Hennessy, 29 September 1880, in 'Correspondence respecting the Alleged Existence of Chinese Slavery in Hong Kong', *PP. HC. 1882 [C. 3185]* pp.80-81, No.9.

At first, Hennessy also deemed the Chinese custom of buying and selling children as an awful form of slave trade and supported the Chief Justice should he decide to punish, in line with English common laws, conduct or action connected with buying, selling, or detaining women and children for any purpose.⁵⁷ Hennessy's determination to reform 'Chinese slavery' horrified the Chinese community, as this reform would hit the 'very core' of Chinese patriarchal system. In traditional China, the male parent had absolute power over members of his household. The right for a male patriarch to sell his children, concubines and even wives under certain conditions was not only unquestioned by the society, but also guaranteed by Chinese state laws. Chinese patriarchal social institutions and practices such as polygyny, female domestic servitude or son adoption were often carried out in the form of a monetary bargain. The colonial government's prosecution drive against all kinds of Chinese selling and buying children and women was therefore to shake and challenge the corner stone of Chinese traditional patriarchy system.⁵⁸

Native leaders were compelled to come forward to defend Chinese practice of buying and selling women and children not human trafficking for slavery but a time-honored custom benefiting poor people and classes,⁵⁹ for instance, Chinese domestic servitude, namely the mui tsai system.⁶⁰ By adopting a young girl as a mui tsai, Chinese gentry looked upon themselves as affording relief to distressed people, an act akin to charity. As a general rule, the mui tsai was in return for her domestic service, clothed, fed, nursed, taught, and when she

⁵⁷ 'Declaration by the Chief Justice that Slavery in every form in Hong Kong is illegal, and must be put down', dated 6 October 1879, enclosure 1 to the despatch from Hennessy to the Secretary of State, 23 January 1880, in *PP*, 1882 [C.3185], pp.5-13, No.1. For a detailed account of Hennessy's controversial policies towards Chinese 'slavery', see D. Lambert & P. Howell, 'John Pope Hennessy and the Translation of 'Slavery' between Late Nineteenth Century Barbados and Hong Kong,' 55 *History Workshop Journal*, 2003, pp.1-24.

⁵⁸ Chinese patriarchy system is a set of historically evolving institutions with local variations. In a Confucian Chinese patriarchal family system, male parent, as the head of a definitive household, was the representative of a family. E. Simm, 'Chinese Patriarchy and the Protection of Women in Nineteenth-Century Hong Kong', in M. Jaschok & S. Miers, ed., *Women and Chinese Patriarchy: Submission, Servitude, and Escape*, Hong Kong: Hong Kong University Press, 1994, pp.142-143, 163-166.

⁵⁹ [Chinese Petition to His Excellency the Governor to Explain Chinese Custom of Child Adoption and the Purchase of Children], dated 22 October 1879, translated by Dr. Eitel on 25 October 1879, enclosure 11 to Despatch No.1 from Hennessy to the Secretary of State, 23 January 1880, in *PP*, 1882 [C.3185], pp.44-49. Chinese version of this petition is printed in *The History of the Po Leung Kuk, 1878-1968*. Hong Kong: Po Leung Kuk printer (in Chinese), pp.220-222.

⁶⁰ Mui tsai, which means 'little sister' in Cantonese, was the South China version of a practice in which girls were acquired at a young age by a family to work in their households as servants and would be married off by this same family when they reached adulthood, usually around the age of eighteen. See Karen Yuen, 'Theorizing the Chinese: The Mui Tsai Controversy and Constructions of Transnational Chineseness in Hong Kong and British Malaya', 6 (2) *New Zealand Journal of Asian Studies*, 2004, pp.95-110, p.97. In Mandarin or Putonghua mei zai is more commonly called ya'huan, 丫环 or bi'nü, 婢女. On mui tsai see *supra* Chapter 1 note 68.

had grown up, to be decently married off. If the buying and selling mui tsai was prohibited, thousands of female infants would be drowned owing to poverty and Chinese prejudice against girls.⁶¹

In order to distinguish ‘good human traffic’ from evil human traffic, Hong Kong’s local Chinese community leaders proposed to form a voluntary Chinese society to assist the colonial government to stamp out kidnapping and to rescue women and girls who were cheated into prostitution.⁶² This proposal was indeed the prelude of the Po Leung Kuk (Baoliangju, 保良局, literally, the protection of the innocent; hereafter ‘PLK’), an influential Chinese charitable society which exists until today in Hong Kong.⁶³

Hennessy, who was ‘inflicted’ with a ‘native race craze’ wherever he went, welcomed local Chinese residents’ participation in Hong Kong’s public affairs.⁶⁴ Both Hennessy and his predecessors acknowledged that the prosperity of Hong Kong could not be sustained without Chinese contributions. But Hennessy was the only Governor who made serious efforts to elevate the political and social status of Hong Kong’s Chinese residents so that the influence of the leading figures would match Chinese economic contributions to the Colony. It was under Hennessy’s government, that the first Chinese legislative counsellor Ng Choi was appointed. Besides, Hennessy did not believe the superiority of western sanitary science over Chinese sanitary traditions.⁶⁵

But he was not so certain about the Chinese defence of their custom of buying and selling children. As was his want, Hennessy turned to Dr. E. J. Eitel, his Chinese secretary and adviser on all issues relating to the Chinese. Eitel, an outstanding sinologist in the nineteenth century of Hong Kong submitted a long report on Chinese slavery and supported the local Chinese elite’s conservative standpoint,

Chinese domestic servitude appears to be a low form of social development when judged by the advanced standard of European civilization, but when judged by the relative standard of Chinese civilization, founded on entirely different principles, it has its legitimacy as the best possible form of social development under the circumstances. Absolute condemnation of Chinese

⁶¹ Enclosure No.11 to Despatch No.1, in PP. HC. 1882 [C.3185], p.45, and *The History of the Po Leung Kuk, 1878-1968*. Hong Kong: Po Leung Kuk printer (in Chinese), p.221.

⁶² ‘Memorial of Chinese Merchants, &c., praying to be allowed to form an Association for suppressing kidnapping and traffic in human beings’, dated 9 November 1878, translated by Eitel, enclosure 4 to despatch No.1, in PP. HC. 1882 [C.3185], pp.26-27. Chinese version of this petition is reproduced in *The History of the Po Leung Kuk, 1878-1968*, pp.232-233.

⁶³ For a brief review of the PLK’s history and its contemporary services, see <http://www.poleungkuk.org.hk/>

⁶⁴ K. Lowe and E. WcLaughlin, ‘Sir John Pope Hennessy and the ‘Native Race Craze’: Colonial Government in Hong Kong, 1877- 1882’, 20 *Journal of Imperial and Commonwealth History*, 1992, pp.223-247.

⁶⁵ The Governor’s Report on the Blue Book 1876-1880.

domestic servitude would therefore be an act of moral injustice.⁶⁶

What Eitel recommended was indeed the adoption of a non-orientalist approach in the system of colonial rule. Consistent with his opinions of the CD Ordinance No.10 of 1867, Eitel thought the best way to rule the Chinese was through the Chinese,

Give the Chinese a considerable amount of confidence and a considerable amount of power, with the distinct and practical supervision of the Registrar General, who is altogether the link between the Chinese community and the European Government.⁶⁷

Eitel further pointed out the disastrous social cost of a sudden abolition of Chinese traditional social institutions, including the mui tsai system, prostitution and its natural concomitant of contagious diseases.⁶⁸ Trusting Chinese traditional medicine, Eitel supported the brothel segregation under the CD Ordinance No.10 of 1867, under which the majority of Chinese prostitutes were not subject to the ‘terror’ of western medical treatment but continued to be treated by Chinese traditional medicine.

Dr. Eitel’s cultural and legal relativism was so persuasive that a most passionate anti-slavery politician like Sir John Pope Hennessy was willing to rectify his oriental view of Chinese slavery. By now, Hennessy also fully realised the importance of Chinese merchant community to Hong Kong’s prosperity and stability. Hennessy firmly believed that sharing power with local Chinese elite was the key to making Hong Kong ‘a flourishing Anglo-Chinese community’.⁶⁹ Even Lord Kimberley started to think that Chinese practice of selling children might be ‘advantageous to the child, both immediately and in [the] afterlife’.⁷⁰

Eitel’s non-orientalist argument also paved way for Hennessy’s passion of sharing power with the local community. Thus when Kimberley refused to abolish the CD Ordinance No.10 of 1867, the best ‘antidote to brothel laws’ Hennessy could think of was to enlist respectable Chinese assistance to improve the administration of brothel registration and inspection system.⁷¹ It soon proved that Chinese co-operation, the Po Leung Kuk’s assistance

⁶⁶ ‘Report on Chinese Domestic Servitude in relation to Slavery’, dated 25 October 1879, Enclosure 11 to despatch No.1 in *PP*, 1882 [C.3185], p.56. Eitel was also the major contributor of *The Commission Report enquiring into the Working of the Contagious Diseases Ordinance, 1867*.

⁶⁷ ‘Reports of the Special Committee appointed by Sir William Robinson to Investigate and Report on Certain Points connected with the Bill for the Incorporation of the Po Leung Kuk, or Society for the Protection of Women and Girls,’ (hereafter the PLK Committee Report) in *Hong Kong Sessional Papers for the Year 1893*, p.102.

⁶⁸ *PP*, 1880 (118), p.20.

⁶⁹ In the first Chinese justice of peace was appointed. Ng Choi, alias, Wu Tingfang (伍廷芳, who later on became the Qing Government’s first Chinese ambassador to America) became Hong Kong’s first Chinese unofficial member of the Legislative Council. From Hennessy to the Secretary of State, 23 January 1880 in *PP*, 1882 [C.3185], p.4, No.1.

⁷⁰ From Kimberley to Hennessy, 18 March 1882, in *PP*, 1882 [C.3185], p.123, No.22.

⁷¹ From Hennessy to Kimberley, 23 June 1880, in *PP*, 1882 [C.3185], p.80, No.7.

in particular, was more efficient than the government policing force to deal with kidnapping and providing protection of women and children.⁷²

According to the PLK's records, during its first five years of work, at least 1,037 women and children were rescued and properly looked after.⁷³ Taking into account its limited financial capacity, this was indeed a very impressive achievement.⁷⁴ The colonial government was shrewd enough to see the benefits of Chinese co-operation and lost no time to praise Hong Kong's conservative Chinese elite for their ardent voluntary assistance.⁷⁵ Through their participation in the administration of the CD Ordinance, members Hong Kong's local Chinese elite was able to uphold Chinese traditional values and methods in colonial Hong Kong.⁷⁶ The PLK's charitable services under the CD Ordinance had also greatly improved the living conditions of poor Chinese women and children whose welfare had seldom been looked after by the colonial government. By the time Hennessy left Hong Kong in 1882, the Po Leung Kuk had already set up a routine co-operation with the Registrar General that was consistent with Chinese traditional ideology and practice, and maintained something approaching the Chinese patriarchal system in this British colony.⁷⁷

As for the medical effect of the CD ordinance, the brothel segregation system not only ensured European soldiers and troops continue to enjoy some 'safe and clean' sexual services but also avoided interference with the practice of Chinese traditional medicine among the majority of Chinese prostitutes living and working in Hong Kong.

3.2 A pragmatic approach of CD and prostitution control

Blessed by Hennessy's pro-Chinese community policies, the controversial CD legislation survived and continued to develop. In 1886, the CD Acts were repealed by the Parliament. In itself the abolition of CD Acts in Britain had no effect on the colonial

⁷² From Hennessy to Kimberley, 13 November 1880, in *PP*, 1880 [C.3093], p.47 No.35.

⁷³ Baoliangju, *Baoliangju 125 Zhounian Tekan* (in Chinese) [Special Collection for the 125-Year Anniversary of Po Leung Ku] Hong Kong: Po Leung Kuk Publisher, 2004, p.52.

⁷⁴ The Po Leung Kuk did not have regular government subsidy till the year 1932. In its early decades, its maintenance fees were solely from Chinese subscription and were often ran short of money that had to borrow money from other Chinese institutions. See Baoliangju, 2004, pp.50-54.

⁷⁵ From Kimberley to Hennessy, 20 May 1880, in *PP*, 1882 [C.3185], p.72, No.3.

⁷⁶ The typical examples were the preservation of Chinese traditional social institutions of mui tsai and polygyny in colonial Hong Kong. Concubine and mui tsai were often obtained via buying and selling, which according to English laws constituted the crime of human trafficking subjected to prosecution and punishment. But supported by Chinese elite and voluntary associations, the colonial government and its judicial system were also able to distinguish 'good human trafficking' for mui tsai or concubines from 'evil human trafficking' for prostitution. Sinn, 1994, pp.145-147.

⁷⁷ Sinn, 1994, p.149.

ordinances.⁷⁸ But the British public at home who had just successfully carried out the anti-CD Acts campaign was enthusiastic to disseminate British value of liberalism and feminism to every corner of British Empire. The Secretary of State sent a circular dispatch to various colonies encouraging them to follow the British example.⁷⁹

However, in the late 1880s, the government of the Colony of Hong Kong had been very much in favor of retaining the CD Ordinance of 1867. Lengthy dispatches were sent to the Colonial Office in London arguing that the social milieu of Hong Kong was very different from the situation at home, so that the repeal of CD Ordinance would risk revival of venereal diseases among members of the armed forces.⁸⁰ Members of Hong Kong's Chinese elite petitioned to retain the brothel registration and inspection systems so as to prevent the proliferation of brothels in respectable areas and protect women against brothel slavery.⁸¹ After a careful consideration of Hong Kong's particular local conditions, the British Government agreed to retain brothel laws but not the compulsory medical examination. The colonial government was instructed to 'repeal the whole of the existing Contagious Diseases Ordinance, and ... re-enact ... the clauses relating to registration and supervision of brothels, and the provision of free Lock Hospital.' ⁸²

The colonial government continued to prevaricate, forwarding petitions from prostitutes registered for European clients begging to retain the weekly examination and the issuing of health certificate systems.⁸³ These efforts had no effect, failing to change the British Government's decision. Pressed by the Colonial Office back in London, the CD Ordinance in Hong Kong was replaced by the Protection of Women and Girls Ordinance No.19 of 1899.⁸⁴ The main object of this new ordinance was the general protection of women and girls, and not merely preventing the spread of disease. Forty years after the VD Ordinance No.12 of 1857, Mr. Labouchere's humanitarian concern over poor Chinese women was finally embodied in the laws of Hong Kong.

With the increasing emphasis on protection of women and children, the role and social

⁷⁸ Miners, 1984, p.145.

⁷⁹ Despatch from the Colonial Secretary Edward Stanhope to the Governors of Crown Colonies, 25 August 1886 in *PP*, 1887 (347), pp.7-15.

⁸⁰ From Marsh to Stanhope, 10 January 1887 in *PP*, 1887 (347), p.9, No.6.

⁸¹ 'Report of the Expediency of retaining the CD Ordinances of the Colony' in *PP*, 1887 (347), p.10, No.6.

⁸² From Holland to the Administrator of Hong Kong, 2 July 1887 in *PP*, 1887 (347), p.54, No.30.

⁸³ From Des Voeux to Lord Knutsford, 8 October 1888 in *PP*, 1889 (59), p.23.

⁸⁴ The full title of this Ordinance is *An Ordinance enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof to repeal the law relating to the compulsory medical examination of Women and to amend and consolidate the law relating to the protection of Women and young Girls and for other purposes, 1889*, viz. Ordinance No.19 of 1889.

status of Chinese voluntary associations, especially the Po Leung Kuk, was also enhanced.⁸⁵ Systematic protection for women was therefore developed, largely by prominent Chinese associations.⁸⁶ Indeed, it would not be an exaggeration to describe the Po Leung Kuk as the 'de-facto' social welfare department at that time for Chinese community.⁸⁷ Apparently, leaders of the Chinese community enjoyed their role of 'protector' of Chinese women and children. Thus, when the British Government pressed the colonial government to abolish thoroughly the CD ordinances, Chinese elites also objected to those instructions vigorously.⁸⁸

The most striking difference between the authorities in Britain and in Hong Kong in this case is that the stance of the colonial government in Hong Kong was backed by a group of Chinese 'gentry' or leading Hong Kong Chinese residents who strongly supported the CD Ordinance. By endorsing the local Chinese leadership's support for the Ordinance, the Governor was also assisting the local Chinese leaders in Hong Kong to continue the 'patriarchal' leadership role that they had come to enjoy under the CD Ordinance.

Regardless of Chinese peculiar social, historical and religious background of the mui tsai, polygyny and prostitution systems, blaming those institutions as constituting the major source of 'Chinese female slavery' was a typical orientalist interpretation of Chinese traditional cultural. Although the concept of individual liberty and personal right were entirely absent within Chinese traditional ideological framework, it did not necessarily mean that every subordinate member of Chinese family was in a status of slavery. Actually, as Dr. Eitel observed, under the influence of Chinese patriarchy, no one could be free but, rather, all were knotted into a bond of equality and mutual regard.⁸⁹ Unfortunately, not many European colonial rulers tried to understand Chinese tradition from this Chinese perspective. As Eitel pertinently pointed out,

⁸⁵ For example, the task of checking women leaving Hong Kong ports was undertaken by the Po Leung Kuk. While in other colonies, the checks of women were carried out by government officials. See CO 129/259 (12527), Colonial Office Memorandum, from *W. Johnson to Mr. Bramston*, 23 November 1893, cited from P. Levin, 'Modernity, Medicine, and Colonialism: The Contagious Diseases Ordinances in Hong Kong and the Straits Settlements', *6 Positions: East Asia Cultures Critique*, 1998, pp. 675-705, p. 703.

⁸⁶ In addition to Po Leung Kuk, other prominent Chinese associations like the Tung Wah Hospital and the District Watch Committee also took an active role in tracing and suppressing the kidnapping of women and children. Actually, by the late 1880s of Hong Kong, Chinese community had developed a matured internal social control mechanism, with the District Watch Committee, the Tung Wah Hospital at the top, the Po Leung Ku slightly inferior, and the grassroots societies, like Kai-fong in the bottom. For details of the role of various Chinese associations in the 19th century Hong Kong, please read, H. Lethbridge, *Hong Kong: Stability and Change, a Collection of Essays*, Hong Kong: Oxford University Press, 1978.

⁸⁷ See Lethbridge, 1978, p. 98.

⁸⁸ See various Chinese petitions against the abolishment of CD Ordinance enclosed and discussed in the *Parliamentary Papers, House of Commons* (PP.HC.) 1887 (347), pp. 7-16; PP.HC. 1890 (242), p. 29; PP. 1894 (147), pp. 51-52.

⁸⁹ PP, 1882 [C.3185], p. 51.

Few foreigners have comprehended the extent of social equality which this conception of the family practically engenders. The amount of influence which woman, brought and sold as she is, really has in China, and there within her proper sphere, within the family, is little understood.

By pointing out the peculiarities of Chinese traditional patriarchy, Dr. Eitel rejected an orientalist interpretation of Chinese social institutions,

‘The depth of domestic affection, of filial piety, of paternal care, which is ingrained in every member of this colossal aggregation of families called China, has never been fathomed yet, and is almost unintelligible to the members of modern European Societies, which, in their haste to constitute a social order in which every personal relation shall be based on the free and intelligent agreement of individuals, almost forget that they are building up the rights of the individual on the ruins of the family, and developing social equality and individual liberty at the expense of domestic affections and filial piety. Who would glibly decide that this modern intellectual individualism of the West, with all the development it has wrought in science and mechanics, is an undoubted advance upon the filial piety and intuitive faith of Chinese patriarchalism?’⁹⁰

However for many European colonists, Eitel’s non-orientalist interpretation was too radical to be accepted. Moreover, from political point of view, it was also very difficult, if not completely impossible, for a European sovereign power to uphold Chinese traditional social institutions and values. For instance, when Dr. Ho kai, a Chinese unofficial member of the Legislative Council (1887-1914) suggested the colonial government to admit the validity of polygamous marriages, F. Fleming, the then acting Governor responded that ‘I did not consider it the duty of a Colonial Legislature to declare what, under Chinese law, should or should not constitute marriage.’⁹¹ Similar opinions were applied to Chinese mui tsai system. Although by the early 1880s, Lord Kimberley had come to understand that the Chinese institution of the mui tsai was different from ‘negro’ slavery, the fact that mui tsai was obtained via purchase still made him uncomfortable and he therefore hoped to transform mui tsai system to a contract based domestic service hiring system.⁹² To what extent the western style contract based domestic service and Christian monogamy would suit and benefit poor Chinese families and girls were questions beyond the concern of the European colonial authorities.

Nevertheless, the practical contributions of Chinese voluntary associations were well observed by the colonial government. For instance, without the PLK’s assistance, it would be

⁹⁰ *PP*, 1882 [C.3185], p.56. While Eitel tried to defend Chinese patriarchalism against intervention based so-called western standards, he probably over emphasized the better sides of Chinese patriarchal system and tuned down the miseries suffered by subjugates, especially those of Chinese women in particular. Indeed, Eitel’s insistence of cultural relativism is criticised by some scholars as encouraged the colonial government to collaborate with Chinese merchant-gentry in Hong Kong, thus failed to protect the rights of subjugated women. A point will be elaborated in the concluding chapter to this dissertation.

⁹¹ From Fleming to Lord Knutsford, 30 July 1890 in *PP*, 1882 [C.3185], p.18, No.3.

⁹² From Kimberley to Hennessy, 18 March 1882 in *PP*, 1882 [C.3185], p.121, No.22.

impossible for the Registrar General and Superintendent of police to deal with the problems of kidnapping and brothel slavery in such an effective and humanitarian manner.⁹³ In 1893, accordingly, in response to local Chinese requests, the colonial government enacted the Po Leung Kuk Incorporation Ordinance, No.10 of 1893. After 15 years' extra-legal service, the PLK finally obtained a permanent and clear legal position in colonial Hong Kong. This PLK Ordinance was a formal acknowledgement by the Hong Kong Government of the PLK's invaluable services to the colony's local Chinese community.

But acknowledging the PLK's service did not necessarily mean that European colonial rulers of Hong Kong appreciated or accepted Chinese traditional ideologies often held by the PLK and its leaders. Actually the PLK Ordinance was passed against significant resistance from European colonists, who were always suspicious of the real purpose of Chinese co-operation,

Chinese ... are ignorant of the principles and practice of English law they can take no part in the management of our affairs, and have no just or rightful claim to a controlling voice in the Government. They are entitled to be heard and consulted, but the power and authority must rest in the ruling race and in its representatives.⁹⁴

In order to ensure the safe passage of the PLK Bill in the Legislative Council, the Governor had to assure suspicious Europeans again and again that the 'real intention' of this Bill was 'to place the society more under the control of the government than it has ever hitherto been.'⁹⁵ The proposed ordinance also put the PLK under close supervision of the Registrar General to prevent the 'irregularities' of the Chinese administration of English justice. Even so, British Government back in London thought that this new legislation granted too much freedom and power to the PLK. Under the instructions of the Colonial Secretary, an amendment was introduced shortly after the passing of the PLK Ordinance to restrict the power of Po Leung Kuk (Ordinance No.1 of 1894).⁹⁶ For this restrictive amendment, Chinese elites showed no objections. Perhaps members of the local Chinese community in Hong Kong at that time were satisfied with their permanent legal status under

⁹³ The PLK's function was more than suppressing kidnapping. The PLK enjoyed certain quasi-policing and judicial power to 'assist in the detection and bringing to justice of person guilty of kidnapping and kindred offences'. The PLK also acted as an asylum center 'providing temporary accommodation for destitute women and children rescued from illegal custody' and 'restore rescued women and children to their relatives.' In case of those who were friendless in Hong Kong, the PLK even shouldered the responsibility to 'restore rescued women and children to their relatives,' and 'to make such provision as may be proper for their welfare', such as marriage arrangement or children adoption, see 'Rules for the Society for the Protection of Women and Children, 1882' in the HKGG 5 August 1882, pp.653-655.

⁹⁴ HKH, 19 June 1893, p.101.

⁹⁵ HKH, 25 April 1892, p.121.

⁹⁶ For details please read *Despatch from the Colonial Secretary Ripon to the Governor William Robinson*, 22 December 1893, reprinted in HKGG, 17 March 1894, p.215.

the colonial laws. As for the scope of their power, they could always expand it in practice within the boundaries tolerated by the colonial government of course. The co-operation between European colonists and Chinese elites in Hong Kong was based on pragmatism rather than common values.⁹⁷

During the prolonged communication with Hong Kong on the complete abolition of CD legislation, the British Government back in London gradually came to recognise the power of Chinese traditional culture and the limits of English law. Chinese community in Hong Kong was but a dot in the ocean of the vast social life in mainland China. The pulse of Chinese social life in Hong Kong beat in union with that of patriarchal China. As long as mainland China maintained its traditional social institutions, and conservative Chinese elite enjoyed the leadership of Hong Kong's Chinese community, any prohibitive legislative against Chinese traditional social institutions would be rendered powerless and served more harm than good to the society.

Dr. Eitel and Governor Hennessy's non-orientalist approach to colonial rule might be too radical – as the British saw the situation – to follow, but from pragmatic point of view, a less orientalist method deserved to have a try. Thus, on the one hand, the British Government demanded a full abolition of the whole system of CD and brothel control in 1894.⁹⁸ On the other hand, the British Government was prepared to leave a back door through which the whole brothel and CD control could be reintroduced.⁹⁹

⁹⁷ But the men on the spot might not think so. Chinese gentry and the European colonists interpreted the other's behavior according to one's cultural background. So the colonial government might interpret Chinese active participation as Chinese appreciation of Western style 'rule of law'. Chinese elite might interpret the colonial government's supports for their participation as an appreciation and acknowledgment of the value of Chinese legal culture. The best example of this mutual misinterpretation would be the mutual compliments sent by the Directors of the Tung Wah and government officials to each other. In Tung Wah's eulogies to the government, the colonial officials were always analogized as 'benevolent fathers' for Chinese community, while Chinese subjects were like 'innocent infants'. The colonial officials on the other hand praised the 'high sense of public responsibility' of the Tung Wah's Directors. For instance, the pamphlet of *Farewell Dinner in honour of the Hon. J.C. McDouall, C.M.G., J.P., Secretary for Chinese Affairs and Mrs. McDouall by permanent advisors and directors, Tung Wah Group of Hospitals*, repeated such kind of dislocated compliments in the year 1966, which only indicates the misconceptions between Chinese elite and the colonial government in the early decades of their co-operations. See The Tung Wah Group of Hospitals, *Farewell Dinner [...] Hong Kong: the Tung Wah Hospital Publisher, 1966*.

⁹⁸ Following this home instruction, the colonial government introduced The Women and Girls' Protection Amendment Ordinance No.6 of 1894 which fully repealed all the CD and brothel laws, regulations introduced under previous Ordinances.

⁹⁹ It was reported that in 1897 half the soldiers were infected by venereal diseases, two times as much as the situation ten years earlier. Chinese elites complained that sly brothels sprang up in respectable districts. Rich Chinese families considered to leave Hong Kong to avoid the disturbance of sly brothels. Without the brothel registration and inspection system, the PLK found it more difficult to trace human trafficking and prevent ill-treatment of prostitutes. For health, economic and moral reasons, the British Government allowed the colonial government

After the legal framework for CD and brothel control was repealed in 1894, the British public's concerns over Hong Kong's social hygiene waned. Ministers and officials were only too glad to see that this embarrassing topic ceased to be raised by Parliament members. With implicit encouragement from the British Government back in London, the provisions of CD and brothel control were gradually re-introduced through various amendments to the Protection of Women and Girls Ordinances.¹⁰⁰ By the early 1920s, Hong Kong's CD and brothel regulation had developed into a highly comprehensive regulatory complex.¹⁰¹

According to the colonial government's reports, this comprehensive system benefited almost all sections of the Hong Kong society: streets were clear of streetwalkers who might pester passers-by, and the troops were almost free of CD. In 1922 only seven per cent of the British army's soldiers stationed in the colony were under treatment for venereal disease.¹⁰² Under the brothel registration and inspection system, the PLK continued to rescue unfortunate women in poverty or deceived into a life of prostitution, with the number rescued ranging from 300 to 660 people each year.¹⁰³ As for those professional prostitutes, a complicated classification and supervision system was elaborated to prevent ill-treatment and sexual slavery.¹⁰⁴

4. The abolition of CD legislation in Hong Kong

However, the health condition among members of the Chinese community was not at all so good. It was estimated by medical officers that the rate of Chinese male population infected with syphilis and gonorrhea was as high as 40 per cent.¹⁰⁵ Yet the colonial government did little to improve the situation. As long as the health of European community was protected, the colonial authorities were happy to let prominent Chinese voluntary associations such as the Tung Wah Hospital to look after the health general Chinese

to make it an offence for the brothel keeper to permit any woman suffering from venereal disease to remain on the premises; and also an amendment empowering a magistrate to close down any brothel if an application was made by the Captain Superintendent of Police or the Registrar General. The Women and Girls' Protection Ordinance No. 9 of 1897.

¹⁰⁰ Ordinances relating CD control, prostitution and the mui tsai system are colored in red in the Appendix II to this dissertation.

¹⁰¹ For details of the development of the CD legislation in the 1920s colonial Hong Kong, see Miners, 'State Regulation of Prostitution in HK', 1984, pp.148-150. In that paper, Miners pointed out that Hong Kong's CD regulation in post-1900 period was clothed under the Protection of Women and Girls Ordinance and remained. The systems of brothel registration and medical examination were extra-legally established.

¹⁰² Macfarlane and Aubrey: *Journal of the Hong Kong University Medical Society*, Vol. 1 April 1922, quoted in CO 129/480 p. 260.

¹⁰³ 'Po Leung Kuk's chronology key events [1878-1969]' in *The History of the Po Leung Kuk, 1878-1968*. Hong Kong: Po Leung Kuk printer (in Chinese), pp.124-178.

¹⁰⁴ Memorandum by Secretary for Chinese Affairs, 4 June 1923 [with enclosures] in CO129/480, pp.254-264.

¹⁰⁵ Miners, 'State Regulation of Prostitution in HK', 1984, p.150.

community according to their traditional methods.¹⁰⁶

The colonial medical officers interpreted the high incidence of venereal diseases among Chinese as ‘evidence’ proving the ‘inferiority’ of Chinese traditional medicine. This was an unfair accusation against Chinese medicine if we taking into the then socio-historical background into account. After the overturn of the Qing Dynasty in 1911, China went into a decade-long turbulent warlord period, which not only exacerbated mainland China’s poverty but also interrupted a steady supply of Chinese medication and doctors to overseas Chinese. The social turbulence, wars, natural disasters experienced by mainland China in the early 20th century also forced Chinese labourers to emigrate overseas, a practice which also boosted in turn the crime of human trafficking. Against this broad background, we can understand that the self-regulated mechanisms of women protection and health care which had been largely carried out by Chinese benevolent associations were unable to cope with the increasingly social problems. It was against this socio-medical background that the incidence of venereal diseases among Chinese community soared upwards in the late 1910s and 1920s.

4.1 The CD controversy evoked by Singapore

Due to the relaxation of Chinese self-regulated systems, the twin specters of venereal diseases and women trafficking haunted mainland China and overseas Chinese communities. In Hong Kong, owing to the strict brothel segregation system, European health was not impacted by the increased VD incidence among Chinese community. But the European colonists in Singapore were not as fortunate as they were in Hong Kong. In 1916, all European prostitutes were deported as a war time measure, and the Japanese brothels closed down in 1919. The clients then turned to sly brothels staffed by Chinese and Malay prostitutes who were not subject to western medical examination, and who were allegedly (and it seems likely in practice) infected with venereal diseases. Soon the rate of infection among European population was as high as Chinese community which was estimated between 50 and 75 per cent.¹⁰⁷ A small medical committee was appointed by the Singapore government to investigate the problem. The committee concluded that in order to control the VD, the previous CD legislation would have to be re-introduced and compulsory medical examination need to be applied to all prostitutes whether working in licensed brothels or independently. The Governor of Singapore lost no time to implement the Committee’s

¹⁰⁶ Here we might add that the colonial medical authority objected brothel segregation system from the very beginning in fearing of the spread of VD to European male population by those unchecked Chinese prostitutes who normally consulted Chinese traditional doctors. In colonial medical officers’ opinion Chinese medicine was ‘backward and unscientific’, and the safest way to protect the health of European community was to apply western medicine to the whole population of Chinese community.

¹⁰⁷ Miners, 1984, p.152.

recommendations, and a bill was drafted and sent to London for approval. This draft bill immediately stirred a storm of protest both inside and outside the House of Commons. The dormant CD controversy was once again revived.

Compared with the CD debates in the nineteenth century, the infringement of women's liberty and personal rights though still important was no longer the central argument upheld by anti-regulation activists who this time put more weight on the medical effect, arguing that the 'periodical examination of prostitutes was medically ineffective in checking the spread of venereal disease' but only to give men 'a false sense of security and encouraged promiscuity.'¹⁰⁸ By the early 20th century, it was generally accepted in Britain that the spread of VD was not simply a medical issue but closely integrated with social, economic and political factors. Thus the anti-regulation activists further argued that the most effective method to control the VD was to take wider measures such as better housing, free education and free diagnosis and treatment rather than the brothel registration and inspection system.¹⁰⁹ Pressed by British public and parliament, the draft bill submitted by the Singapore government was overruled by the Secretary of State. From 1927 onwards, the brothels in Singapore started to close down.

4.2 The CD battle in the field of colonial Hong Kong

Compared with the situation in Singapore, Hong Kong's battle for the abolition of brothel control system was more complicated. As mentioned above, the health of European community in Hong Kong was still secured by the control system of prostitution under the Women and Girls' Protection Ordinances. So the European community in general would not welcome the abolition of such system.

Under the extra-legal system of brothel control, all practicing prostitutes were registered and given cards on which pictures were pasted and personal rights were declared. A Police Inspector was seconded to the Office with the sole duty of supervising the implementation of the Women and Girls' Protection Ordinance No.4 of 1897. The Police Inspector's main duties were to prevent irregularities in the running of brothels and to make it more accessible for prostitutes to register complaints or grievances. It was recorded that Chinese prostitutes were quite ready to take advantage of this system and the problem of 'brothel slavery' was effectively controlled.¹¹⁰

The system was said to have obtained a high reputation among mainland Chinese who

¹⁰⁸ First Report of the Advisory Committee on Social Hygiene, August 1925 Cmd 1502. Quoted from Miners' 'State-regulation of prostitution in HK' at 153.

¹⁰⁹ Report of a Committee appointed by the Secretary of State for the Colonies to examine and report on Straits Settlements Ordinance No. 15 of 1927 (Women and Girls Protection Amendment Ordinance) and Federated Malay States Enactment No. 18 of 1927.

¹¹⁰ CO129/480, p.254.

thought that 'Hong Kong customs are good'. Chinese community was satisfied with the system which helped to keep up the standards of family life in Hong Kong. Last but not least, Chinese prostitutes also expressed their satisfaction with this system in the sense that their freedoms were assured and they were accorded consideration by the Secretary for Chinese Affairs (the Registrar-General before 1913) in any trouble.¹¹¹

Later, the National Council for Combating Venereal Disease, the Association for Moral and Social Hygiene and the National Council of Women of Great Britain jointed the social hygiene movement. These organizations believed the connection between the brothel system and the procurement of women, thus consistently pressed the British Government to require Hong Kong following Singapore's action of suppressing all of its brothels.¹¹²

Hong Kong's Chinese brothels received particular attention. In their Commission Report on Hong Kong's social hygiene conditions, Mrs. Nevill-Rolfe and Dr. Hallam's criticized the colonial government's indifferent attitude towards the health of native Chinese.¹¹³ In the Commissioners' opinion, the Tung Wah Hospital was very dirty and badly equipped. The Po Leung Kuk had largely declined into a recruiting ground for cheap supplementary wives by members of the committee of the Kuk. And the so-called 'brothel slavery' did not justify the brothel registration and inspection system any longer. But some scholars and officials realized that the question of prostitution control was a subtle which one should not be judged according to western ideas. In one of his dispatches to the Hong Kong Governor, the Secretary of State instructed that, '... and the grant of permits to keep such houses [brothels], are repugnant to public opinion in this country, and, to an increasing degree, throughout the world.'¹¹⁴

Yet, the so-called 'problem' of infringing women's rights and liberties as characterised in Britain was not the key 'problem' within the then Chinese patriarchal ideological framework. We might still remember Dr. Eitel, a well-known name in Chinese scholarship, who complained in the late 1870s,

It must be clearly understood, however, that the 'family', which thus forms the unit of the Chinese system of patriarchalism, is not what we understand to be a family [...] Few foreigners have comprehended the extent of social equality which this conception of the family practically engenders. The amount of influence which woman, brought and sold as she is, really has in China, and

¹¹¹ CO129/480, pp.255-156.

¹¹² Miners, 1984, p. 15, also CO129/480, pp. 255-156.

¹¹² CO129/480, p.254.

¹¹² Miners, 1984, p.154.

¹¹² Mrs. Nevill-Rolfe and Dr. Hallam's confidential report of the Commission appointed by the National Council For Combating Venereal Diseases, 4 April 1921, CO 129/472, pp.356-366.

¹¹³ Note above.

¹¹⁴ [Dispatch from J.H.Thomas to the Governor of Hong Kong], 29 September 1931, in CO129/533/10, pp.26-27.

there within her proper sphere, within the family, is little understood.¹¹⁵

Unfortunately, half a century had elapsed, the orientalist prejudice held by many westerners in Hong Kong towards Chinese customs had hardly been improved. By warning the disastrous results of the suppression of all brothels, Sir Joseph Kemp, the Chief Justice of Hong Kong's Supreme Court added a point on contemporary Chinese understanding of prostitution,

It must be remembered that Chinese do not view prostitution as we do. They look upon it through a more lenient eye [...] Prostitutes are not social outcasts to the same extent as in West countries. [In China] a prostitute often becomes a highly respectable concubine ... I realise it that this is a very difficult defence to make, especially as the English public do not always realise the delicacy required in ruling an alien civilisation.¹¹⁶

Being experienced in governing different colonies, the Colonial Office certainly realised the delicacy of the subject of suppression brothels,

The subject is one that raises some of the most delicate and disputable points in the whole range of human relations. Clearly we need to be very cautious in assuming that western ideas on such matters are necessarily applicable without qualification to eastern communities, such as Hong Kong.¹¹⁷

However, by the time of 1930s, more influential organizations such as the League of Nations stepped in. A Commission appointed by the League of Nations of Enquiry into the Traffic in Women and Children in the Far East arrived in Hong Kong in December, 1930. Faced with the increased international pressures, the Colonial Office went on to analyse, 'On the other hand, we live in an age of League of Nations Commissions and are always in danger of being called to order if we fall short, in any part of the Empire, of Geneva standards.' Thus the Governor was instructed to take immediate action before the Commission issued its formal report, so that 'if the Report is in any way condemnatory or critical in character, your Government would be in a much stronger position.'¹¹⁸

This instruction arrived Hong Kong in November 1931. Reluctantly but obediently, the colonial government closed brothels of different classes one by one. First the closure of brothels catering for Europeans, then brothels for Chinese. The latter took much longer time than the former. In June 1935, the last Chinese tolerated houses closed down. Since then, the CD and brothels laws in colonial Hong Kong were literally dead letters. Thus when the Women and Girls' Protection Ordinance No.5 of 1938 formally repealed all the previous

¹¹⁵ *PP*, 1882 [C.3185], pp.51-52.

¹¹⁶ 'Note on the Legal and Practical Position of brothels in Hong Kong', Peel to Passfield, 9 June 1931 in CO 129/533/10, p.46.

¹¹⁷ [Note from Sir J. Shuckburgh to Sir Robert Hamilton on the drafted dispatch instructing the Governor to suppress all brothels in Hong Kong] 8th September 1931, in CO129/533/10, pp.19-20.

¹¹⁸ CO 129/533/10, p.34.

laws, it was only in a symbolic sense. It might not be coincidentally, in the same year of 1938, the mui tsai system was fully replaced by the contract based domestic servant system under the Domestic Servant Ordinance, 1938. And also in the year 1938, the Tung Wah Hospital was transformed into a western medicine dominated hospital.¹¹⁹

The subsequent social effect of the abolition of the CD and brothels was as bad as had been predicted by the colonial government. The incidence of VD among troops soared up from 7 per cent in 1922 to 24 per cent in 1938, and a much higher proportion among Chinese population.¹²⁰ A large number of sly brothels sprang out the Colony masquerading as dancing academies, bath houses, or massage parlours.¹²¹ The transformation of mui tsai to paid domestic servants did not really help to improve living conditions of those poor young girls, especially for those had not reached legal working age under the Female Domestic Service Ordinances.¹²² As for Chinese polygamy, perhaps due to Chinese elite's strongest resistance, the colonial government tolerated this particular family tradition till the 1971, forty years later than mainland China's abolition of concubinage.¹²³

Conclusions

Due to the different legal cultures involved, Hong Kong's CD laws outlived British CD Acts almost fifty years.

Taking account of the possible good effect of the CD laws to protect public health, the final success of British anti-CD regulation campaign can be better understood against British

¹¹⁹ Puiyin Ho, *Po yu Li: Donghua sanyuan zhidu de yanbian (Deconstruction and Reconstruction: the development of the Tung Wah Three Hospitals)*, Vol.4, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2010, pp.16-17.

¹²⁰ *Report of the Committee constituted in accordance with the directions of H.E. the Governor contained in his letter dated 9 April 1938 in C.S.O.5661/32 at 19, quoted from Miners, 1984, p.157.*

¹²¹ Miners, 1984, p.157.

¹²² For instance, before the mui tsai system was abolished, the PLK dealt with many cases related with domestic abuses. After the mui tsai system was replaced by the contract based domestic workers, domestic abusing cases were reduced but the number of discarded baby girls and girls was greatly increased. In the year of 1939, the PLK had to accommodate 1,157 female refugees owing to the abolition of mui tsai system and the Sino-Japanese war. See *The History of Po Leung Kuk, 1878-1968* pp.55-56, 151, and also N. Miners, 'The Abolition of the Mui Tsai System, 1917 to 1924' in *Hong Kong under Imperial Rule, 1912-1941*, Hong Kong: Oxford University Press, 1987, p.290.

¹²³ The Republic of China abolished Chinese traditional marriage and established western style marriage under the Civil Code 1931. But the colonial government in Hong Kong did not prohibit Chinese traditional marriage till the passage of the Marriage Reform Ordinance 1971. For the colonial government's conservative attitudes on the rights of women, see *Chinese Marriages in Hong Kong*, Hong Kong: Government Printer, 1960; *The McDouall-Heenan Report 1965*, Hong Kong: Government Printer, 1965 and *Colonial Secretariat, White Paper on Chinese Marriages in Hong Kong*, Hong Kong: Government Printer, 1967.

liberal style legal tradition and culture. While Chinese ardent support in Hong Kong for the CD laws were mainly out of their concern to preserve Chinese traditional institutions such as concubinage and mui tsai systems in colonial Hong Kong. By encouraging Chinese co-operation, the colonial government was indeed adopting a non-orientalist view of Chinese traditional values and social institutions. In this sense, the colonial government's consistent struggles for the preservation of CD legislation in the 1880s, 1890s, 1920s and 1930s, although could be criticised as self-interest motivated, are nevertheless brave resistance against the deep-rooted orientalist prejudices found in western society at that time.

The final abolition of Hong Kong's CD and brothel laws vividly disclosed the power of legal Orientalism. As David Halperin depicts the situation, the efficiency of some prejudiced presumptions was often extraordinary, 'if the message is already waiting at the receiver's end, it doesn't even need to be sent, it just needs to be activated.'¹²⁴ So was the case of the general British public in their passions in abolishing Hong Kong's venereal diseases and brothel control systems. The League of Nations' intervention further complicated the CD controversy in colonial Hong Kong. Supported by the League of Nations, some international treaties had more power to forge oriental societies alongside western standards. The colonial officers' emphasis on the distinct character of Chinese prostitution achieved nothing but put the British Empire in risk of breaching some international treaties such as the International Convention for the Suppression of the Traffic in Women and Children, 1921 and the International Convention for the Suppression of the Traffic in Women of Full Age, 1933.

Seen from legal orientalism perspective, the end of Hong Kong's CD and brothel legislation in the 1930s indicates the final triumph of Orientalism. And the negative social effect brought by this abolition is even more provoking. Although the problem of legal orientalism has received increasingly academic interests, its actual destructive effect upon real social life in oriental societies is still heavily under-explored. This historical re-visitation of Hong Kong's CD and brothel legislation is a small attempt for a critical dismantling of legal legacies left over by imperialism and colonialism whose discourses were tapped with strong oriental tunes. In the following chapters, we will continue to investigate the interactions between the transplanted public health laws and local Chinese community through this critical theory of legal orientalism. Here in this case study, we can hear at least some colonists' non-oriental views towards Chinese traditional social institutions such as prostitution and mui tsai systems. The colonists' sympathetic and understanding view of Chinese traditions to some extent encouraged the co-operation between the colonial government and Chinese community. Would Chinese ways of house construction and

¹²⁴ D. M. Halperin, *Saint Foucault: Towards a gay hagiography*, New York: Oxford University Press, 1995, p.13.

Chinese traditional medicine be lucky enough to get legal support? If not, for what reasons did they fail? In the subsequent case studies of space and medical controls, answers are awaiting.

Chapter Four

Plague Controls: The Plague came and Chinese ways had to go

Hong Kong's public health laws lay dormant until the outbreak of bubonic plague in 1894. The terrifying plague was a wake-up call for the more effective implementation of the public health laws. In combating the plague, the law itself witnessed significant changes. This chapter explores the kinds of changes that the plague brought to public health laws of Hong Kong, as well as examining the efficacy of these legal changes in addressing the crisis brought about by the plague. As will be seen in this Chapter, it was the Chinese residents of Hong Kong, especially poorer Chinese, who fell victim to the devastating disease. Every preventative bye-law issued by the colonial government had direct and intimate effects on Chinese lives and property. In that setting and at that momentous time of the plague, the hidden tensions and conflicts between transplanted English law and indigenous society were seriously exposed.

1. The plague and the conflicts

1.1 The plague came and activated the law

On the morning of 10 May 1894, twenty Chinese patients were identified at the Tung Wah Hospital as suffering from the bubonic plague.¹ These patients had all been sent from accommodation in the nearby Taipingshan district.² Taipingshan was an overcrowded area on Hong Kong Island whose residents were largely poorer Chinese; it was notorious for its squalor. As early as 1874, the Colonial Surgeon Dr. Ayres had predicted a fearful epidemic in this district.³ Despite warnings from medical authorities, nothing had been done to improve the state of Taipingshan in the intervening twenty years. The Sanitary Board had been set up in 1882, but in the Colonial Surgeon's opinion the Sanitary Board was merely a façade of an institution: 'long wordy, windy, desultory, rambling discussions are held by the Board at their

¹ The most well-known symptom of bubonic plague is painful, swollen lymph glands, called 'buboes'. It was perhaps because of this symptom that the disease took the name it did.

² [Dr. Lowson's Report], 16 May 1894, Enclosure to Despatch no.115 from Governor Sir William Robinson to Lord Marquess, 17 May 1894, CO129/263, p.50. See also 'Correspondence relative to the Outbreak of Bubonic Plague at Hong Kong,' printed in British Parliamentary Papers, House of Commons (PP.HC.), 1894 [C.7461], p.5.

³ For details of Dr Ayres' criticisms of Chinese housing conditions and the Taipingshan district see 'Report on the Licensed Brothels in Hong Kong', 19 January 1874, and 'Report of the Colonial Surgeon on his Inspection of the Town of Victoria and on the Pig-Licensing System', 15 April 1874. Copies of these two reports are published in PP.HC.1881 (426), pp.55-59.

fortnightly meetings ending in nothing being done.⁴ Some attempts had been made by the Board to tackle the problem of overcrowding but, threatened by Chinese riots and strikes, overcrowding and unhealthy conditions were 'relegated to the future for further consideration'.⁵ Over a period of twenty years, important public health laws and numerous sanitary bye-laws were also issued.⁶ But many of them remained little more than dead letters. The Buildings Ordinance No. 15 of 1889 only concerned new buildings; old buildings built before the Ordinance's promulgation was not subject to its provisions.⁷ When the plague broke out in 1894, Dr. Ayres admitted the sanitary conditions in Taipingshan were even worse than before, the result of the increased population.⁸

From the perspective of sanitation, the majority of houses in Taipingshan were unfit for human habitation: dark, filthy and humid with a ubiquitous, unbearable stench.⁹ Unfortunately, almost all housing was crowded with coolies, hawkers and other poor Chinese. Overcrowding exacerbated the poor sanitation. It was apparent that the awful sanitary conditions in Taipingshan were a perfect breeding ground for plague-infected rats. But at the time of outbreak of the epidemic, the cause of the disease was not known.¹⁰ When plague-stricken patients were identified in Taipingshan district,¹¹ it was natural for colonial

⁴ 'The Colonial Surgeon's Report for 1894', in *Hong Kong Sessional Papers for the year 1894*. (Hong Kong Sessional Papers, hereafter *SP*)

⁵ Note 3 above.

⁶ As mentioned briefly in Chapter 2, based on Chadwick's sanitary report on Hong Kong of 1882, the colonial government had introduced a series public health laws since 1883, including the Public Health Ordinance No.24 of 1887, the Buildings Ordinance No.15 of 1889, the Crown Lands Resumption Ordinance No. 23 of 1889. For a full list of the public health ordinances enacted between 1882 and 1893, see Appendix II 'Hong Kong's medical and sanitary laws, 1841-1941'.

⁷ 'The Colonial Surgeon's Annual Report for 1894'.

⁸ Note 3 above.

⁹ Note 3 above.

¹⁰ Bubonic disease is an infection of the lymphatic system, usually resulting from the bite of an infected rat flea. It was not until 1905-1906 that the flea was widely accepted as the disease vector, based on the report of the Plague Research Commission in Bombay. Once the vector was discovered, more effective preventative measures were carried out to eradicate the disease in Hong Kong. Outbreaks of the plague, however, continued to appear in the colony as late as 1929. See E. G. Pryor, 'The Great Plague of Hong Kong', in 15 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1975, pp.61-70, pp.68-69; Faith C. S. Ho, 'History of Infectious Diseases in Hong Kong: A Story of Discovery and Challenge,' in A. Starling et al. ed., *Plague, SARS and the Story of Medicine in Hong Kong*, Hong Kong: Hong Kong University Press, 2006, p.27.

¹¹ Fifty percent of the victims of the 1894 plague came from Taipingshan. See Starling, *Plague, SARS and the Story*, p. 33.

medical authorities to attribute the plague's outbreak to poor health and living conditions among Chinese.¹² Even Chinese traditional medicine was seen as contributing to the epidemic.¹³ Chinese methods of sanitation and sanitary conditions among poor Chinese, tolerated or neglected for such a long time, were now of utmost concern. Medical authorities demanded the prompt implementation of precautionary measures. Dormant laws came alive.

On the evening of 10 May 1894, the colonial government published a proclamation declaring Hong Kong to be an infected port, effective for a month starting from the date of its proclamation.¹⁴ The government thought one month would be sufficient to contain the plague. The real situation, however, turned out to be much more intractable. By late May, the plague showed no sign of abatement, and was killing Chinese residents of Hong Kong on average from 30 to 40 daily.¹⁵ Instead of revoking the proclamation after one month, it was renewed for another month. The proclamation of 10 June was renewed again from 9 July, and again from 9 August.¹⁶ It was not until the middle of August that the situation improved. On 4 September, after 116 days and after three renewals, the proclamation was finally revoked and clean bills of health were issued.¹⁷

The toll between 10 May and 4 September was 2,562 persons deceased.¹⁸ According to the Colonial Surgeon's report, by the end of 1894, there had been 11 Europeans affected, and of these 2 died; of 'coloured races' 50 had been affected and 36 died; of 2, 619 Chinese patients, 2,447 died.¹⁹ As we can see, the majority of patients had been Chinese, with a

¹² See 'Remarks by Surgeon Penny on the Medical Aspect of the Prevailing Plague', enclosed in Despatch no. 121 from Robinson to Marquess, 23 May 1894, CO129/263: 184-186; PP.HC. 1894 [C.7461], pp.10-11. Dr. Lowson gave a detailed analysis of the causes of the plague in his report 'The Epidemic of Bubonic Plague, 1894', in which Lowson also stressed the unsanitary conditions and overcrowding as factors that had contributed to the plague.

¹³ In the view of western medical professionals, Chinese medicine was completely ineffective in dealing with the bubo disease. Therefore, stubborn Chinese adherence to traditional medicine and the Tung Wah's interference with treatment constituted obstructions to the government's western-style approach to the plague. See Dr. Lowson's report dated 16 May 1894, enclosed in Despatch no. 115 from Robinson to Marquess, 17 May 1894, CO129/263, pp.68-69. Dr. Ayres expressed similar objections to the Tung Wah's interference with plague treatment in his annual report for 1894. See note 3 above.

¹⁴ This proclamation was published in *HKGG, Extraordinary*, 10 May 1894.

¹⁵ Despatch no. 121 from Robinson to Marquess, 23 May 1894, CO129/263, pp.177, 180; PP.HC. 1894 [C.7461], pp.8-9.

¹⁶ See the proclamations published in *HKGG*, 9 June, 9 July and 9 August 1894.

¹⁷ Despatch no. 203 from Robinson to Marquess, 4 September 1894, CO129/264, pp.58-61.

¹⁸ Note 16, p. 59. This figure was disputed and probably much too low. As medical officers observed Chinese were reluctant to report plague victims to the colonial government.

¹⁹ Note 3, p.478. The colonial surgeon's statistics was also lower than the actual cases. According to later medical reports, the number of plague cases identified in 1894 was about 5,000. Even

mortality rate of 93.4%. The figures alone make clear the formidable nature of the plague, and its serious impact on the Chinese residents of Hong Kong. Perhaps not surprisingly, then, the bye-laws issued to eradicate the plague were severe, definitive and particularly intrusive from Chinese point of view.

Bye-laws against the plague

According to the Public Health Ordinance No.24 of 1887, enacted while the plague proclamation was still in force, certain provisions of public health law were activated, with the Sanitary Board empowered to make bye-laws for the purpose of plague prevention and mitigation.²⁰ As soon as Hong Kong was declared an infected colony, the Sanitary Board set out to make preventative bye-laws.²¹ On 11 May, 12 bye-laws were issued by the Sanitary Board. At the same meeting, a Permanent Committee was established under the Sanitary Board to enforce the bye-laws. This Permanent Committee had complete authority to exercise any power vested in the Board.²² Under the bye-laws, the following measures were enacted:²³

5,000 were probably much too low. See 'Report of the Medical Officer of Health', in *Sanitary Report for the year 1921*, Appendix M of *The [Hong Kong] Administrative Reports for the year 1921*, p.M54.

²⁰ Section 32 of Ordinance No. 24 of 1887 prescribed that,

'From time to time after the issuing of any such Proclamation as aforesaid, and while the same continues in force, the [Sanitary] Board may issue bye-laws, as they shall think fit, for the prevention as far as possible, or mitigation of such epidemic ... and from time to time may revoke, renew, and alter any such bye-laws'.

²¹ James Steward Lockhart, the President of the Sanitary Board suggested a committee comprising Mr. Francis (QC), Henry May (the superintendent of the police) and Dr. Ho Kai. This committee would draft new bye-laws immediately after the meeting on 10 May 1894. See 'Black Plague in Hong Kong, Discussions in the Sanitary Board', *The Daily Press (DP)*, 10 May 1894.

²² Initially, the permanent committee comprised three members: the superintendent of the police, the Colonial Surgeon and Mr. Francis. See 'Minutes of the Sanitary Board on 11 May 1894', *The HKGG*, 26 May 1894, p.487. Two weeks later, Mr. Leigh was also elected a member of the permanent committee. See 'Minutes of the Sanitary Board on 7 June 1894', *HKGG*, 23 June 1894, p.538. Dr. Ho Kai and Mr. Lau Wai Chun, the two Chinese members in the Sanitary Board, had not been the members of the permanent committee throughout the plague.

²³ 'Government Notification No. 175', *HKGG*, 11 May 1894.

1. The quarantine of patients: Anyone 'attacked by or suffering from the said disease in any stage shall be promptly removed to the Hygeia or to such other public Hospital'.²⁴
2. Proper burial: 'The bodies of all persons dying from the said disease within the Colony and the bodies of all persons dying from the said disease elsewhere which were brought within the Colony shall be buried in a special place to be set apart.'
3. Obligatory declaration: 'All persons knowing or having reason to believe that any person had been attacked or was suffering from the said disease or from any disease appearing to resemble, it shall notify the same without delay to the nearest Police Station or to some public office or officer, and the officer receiving any such notification verbal or written shall notify the same with the least possible delay to the said Board or to some Inspector or officer thereof.'
4. In-home visitation and disinfection: 'In any neighbourhood affected by the said disease, the Sanitary Board officers or anyone who had been duly authorized by the said Board shall make a house to house visitation for the purpose of inspecting the sanitary condition All articles of clothing or bedding and all other articles whatsoever, which had been in contact with the said disease, shall be removed and thoroughly disinfected.'

Taking into account shortages in time and manpower, the response of the colonial government of Hong Kong to the plague was quite expeditious.²⁵ From the identification of plague cases to the disposition of the dead, the newly issued bye-laws covered almost every aspect of the epidemic, in accordance with contemporary western understanding of contagious disease.²⁶ In fact, the contents of the bye-laws closely followed medical

²⁴ *Hygeia* was a ship hospital which was originally intended for the quarantine of smallpox cases among Europeans. When the plague broke out, the ship was moved from behind Stonecutters Island to West Point, that is, nearer to shore and more convenient for receiving patients from the town. Though Hygia had a quite heartwarming translation in Chinese known as Haizhijia (海之家, literally a home on the sea), as will see below, Chinese residents strongly objected to be treated isolated offshore.

²⁵ The exact date of the plague's break-out was disputed. The colonial government insisted the first plague case was identified on 8 May 1894, but others said the plague had initially struck the colony in April. See 'The Hongkong Plague', *The Lancet*, 23 June, 1894, p. 1581.

²⁶ In 1894, an accepted aetiology of the bubonic plague did not exist. What Hong Kong's medical professionals relied upon at the time were general guidelines for epidemic prevention such as isolation and disinfection, these being based on the germ theory of disease. It was not until 1905 that the rat flea was widely accepted as the plague's vector. For more information on the medical dimension of the plague, see Carney T. Fisher, 'Plague in Hong Kong 1894', paper presented at The International Conference on Hong Kong and Modern China, Hong Kong University, The Center of Asia Studies, 3-5 December 1997. The major difference between Hong Kong's sanitary bye-laws and British corresponding regulations however existed on the non-medical dimension, namely, the manners in carrying out those sanitary measures, the topic of compensation in specific. For instance, section 121 of the Imperial Public Health Act, 1875 and section 6 of the Infectious Diseases Act, 1880 both provided compensation for the

professionals' recommendations.²⁷ During meetings at which the bye-laws were drafted, Dr. Lowson had frequently been invited to the Sanitary Board to provide information on the disease and appropriate preventative measures.²⁸ Given that public health was, by then, a professional domain, the advice of medical and public-health professionals would be much in demand by legislators. Nevertheless, the measures deemed necessary by professionals trained and working in one medical culture might not be accepted socially, especially when that society did not share the same medical culture and understandings.

In drafting the legislation, opinions diverged among legislators in Hong Kong, particularly as it concerned the quarantine of patients. Dr. Ho Kai warned the Sanitary Board that Chinese subjects might object to being quarantined. Since Chinese patients at that time were still very much afraid of being treated by foreign doctors, they especially objected to

destruction of infected clothes and bedding. Under English public health laws, any damage caused in the process of disinfection houses was also entitled to compensation. In contrast, Hong Kong's sanitary bye-laws offered no compensation although the sanitary measures adopted were the same as the ones in Britain. Section 121 of the Public Health Act 1875 (38 & 39 Vict cap 55) prescribed that

'Any local authority may direct the destruction of any bedding, clothing, or other articles, which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same'.

Section 6 of the Infectious Diseases (Prevention) Act 1890 (53 & 54 Vict cap 70) prescribed,

'Any Local authority ... may by notice in writing require the owner of any bedding clothing, or other articles, which have been exposed to the infectious of any infectious disease to cause the same to be delivered over to an officer of the local authority for removal for the purpose of disinfection The bedding, clothing, article shall be disinfected by the authority and shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same and the amount of compensation shall be recoverable in, and in case of dispute, shall be settled by a Court of Summary Jurisdiction.' (The original copies of Public Health Act 1875 and the Infectious Diseases (Prevention) Act 1890)

Although in the 1894 plague crisis, Chinese did not openly claim compensation for disinfection of clothing and bedding, the omitting of compensation by sanitary bye-laws might also have contribute to Chinese subsequent resistance to the anti-plague measures.

²⁷ Drs. Ayres and Lowson recommended disinfection, patients' removal to *Hygeia*, and the prevention of treatment by the Tung Wah. See 'A Joint Letter from the Colonial Surgeon and the Acting Superintendent of the Civil Hospital', *DP*, 10 May 1894.

²⁸ See the minutes of the proceedings of the Sanitary Board on 10 May 1894, 11 May 1894, *The HKGG*, 26 May 1894, pp.487-488. James Alfred Lowson was born in 1866. He graduated from Edinburgh University in medicine in 1888 at the age of 22. He came to Hong Kong, probably in or before 1892. In 1894, at the age of 28, his posting was medical superintendent of the Government Civil Hospital. G.H. Choa, 'The Lowson's Diary: a Record of the Early Phase of the Hong Kong Bubonic Plague, 1894', in *Journal of the Hong Kong Branch of the Royal Asiatic Society*, vol. 33 (1993), pp.129-145, p.130.

the idea of isolation and quarantine.²⁹ Dr. Ho Kai had a good understanding of the Chinese community and suggested a hospital on the mainland instead of the Hygeia ship.³⁰ But Drs. Ayres and Lowson insisted on the removal of all patients to Hygeia. They said that,

We feel sure that if a deputation of the leading Chinese be taken to the Hygeia and the situation is explained to them, and also the fact that the patients will be in the charge of their own countrymen, no difficulty will be found in getting the affected people to go to the ship.³¹

On the insistence of these medical professionals, the bye-laws were passed. In a time of plague, reflection and discussion were an extravagance. With the bye-laws passed, precautions were vigorously carried out by the colonial government. The military joined the anti-plague team in searching house-to-house for cases of infection in Chinatown.³²

1.2 Chinese objections to the law

It soon became apparent, however, that Drs. Ayres and Lowson had been overly optimistic. From visitations to interment, almost every precaution imposed by the colonial government was the object of Chinese recrimination. One of the first acts of the Permanent Committee was to remove plague patients from the Tung Wah Hospital to the Hygeia. But the removal of patients succeeded only after considerable persuasion, as Dr. Lowson complained in his diary.³³ When the Tung Wah was forbidden to receive additional plague cases, Chinese objections against removals increased.³⁴ Dr. Lowson suspected that the Tung Wah Committee had exerted undue influence over Chinese patients.³⁵ The main resistance, though, came from Chinese patients themselves. When some of the directors of Tung Wah and Po Leung Kuk tried to persuade patients to undergo western treatment, Tung Wah and Po Leung Kuk themselves were attacked by Chinese.³⁶

²⁹ Sinn, 2003, p. 246.

³⁰ See 'Discussions in the Sanitary Board', *DP*, 10 May 1894.

³¹ 'Drs. Ayres and Lowson's Joint Report', 10 May 1894, in Despatch no. 115, CO129/263.

³² Dr. Lowson's report on 16 May 1894, enclosed in Despatch no. 115, CO129/263. On 18 May 1894, 12 men from the Royal Engineers and 12 from the Shropshire Light Infantry were enrolled as special sanitary officers. See *The Hong Kong Weekly Press and China Overland Trade Report (HKWP)*, 24 May 1894, p.402.

³³ Choa, 'The Lowson's Diary', p.133.

³⁴ 'Threatened Riots in Chinatown', *DP*, 21 May 1894.

³⁵ See Lowson's 'Report on the Plague 1894', p.203.

³⁶ 'Letter of 'Heathen Chinese'', in *Hong Kong Telegraph*, 23 May, 1894; and, 'Threatened Riots in Chinatown', in *China Mail (CM)*, 21 May, 1894.

Disturbance

There was immediate resistance to house-to-house inspections. Sporadic at first, it soon became widespread.³⁷ In order to avoid these inspections, many cases of plague were not reported as required by law. Actually, it appears that any means were used by Chinese to conceal plague cases. It was, for example, reported that a dead person was propped up at a mahjong table in order to mislead inspectors.³⁸ When concealing cases became impossible, bodies were disposed of in the street under cover of night. This made the public health situation even worse. The government could not trace the exact provenance of the disease, and disinfections and other preventative measures could not be carried out. From the perspective of many Chinese, these efforts to avoid inspections prevented domestic invasions by foreigners, as well as the western medical treatment at the hands of foreigners. More immediately, it enabled them to avoid the fines and penalties that would otherwise be incurred for failing to report cases.³⁹

The colonial government's burial requirements also frightened Chinese. Burying the dead hastily in ditches and covering them with quicklime was contrary to Chinese beliefs. In order to be buried properly on Chinese ground, the Chinese of Hong Kong opted to die on the way to mainland China rather than being treated by western doctors and interred according to western ways. One week after the colonial government's efforts to stamp out the plague began, the exodus commenced. On 20 May, it was said that around 1,000 panic-stricken Chinese fled from Hong Kong. The exodus was growing. Offices were being emptied of their clerks, chair coolies deserted their employers in their hundreds and many domestic servants applied for the amount of their wages then due to enable them to go to Canton or to join their families on the mainland.⁴⁰ In the China Sugar Factory, more than 300

³⁷ *CM*, 14 May 1894.

³⁸ Jean Cantlie Stewart, *The Quality of Mercy: The Lives of Sir James and Lady Cantlie* (London: George Allen & Unwin, 1983), p.67. Quoted from Sinn, 2003, p.164.

³⁹ The penalty varied, from \$2 to \$50 with an alternative of hard labour of from 14 days to two months. Many Chinese had been charged for failing to report. On 15 May, for example, the teacher Lai You Chung was fined \$5, or 14 days of imprisonment in case of default, for his failure to report a case at 10, Wai Tak Lane. On 18 May, a hawker was charged \$50 with an alternative of two months' hard labour for his similar failure to report a case of plague in his own premises: see *DP*, 16 May and 19 May 1894. The colonial government believed that a few convictions and fines would make landlords more vigilant in bringing cases to the attention of the authorities. But the punishments turned out to be ineffective, ironically encouraging Chinese to continue to dispose of corpses clandestinely. This dangerous practice baffled the colonial government until the early 1930s.

⁴⁰ Despatch no.151, from Robinson to Secretary of State, 20 June 1894, CO129/263.p. 462, paragraph 13; PP.HC. 1894 [C.7545], pp.2-3.

workers put down their tools and walked back to Swatow, some 180 miles distant.⁴¹ All the passage boats were full of the poor Chinese of Taipingshan.⁴² For those trapped in the colony, some chose to fight the government's precautions.

On the morning of 19 May, a Saturday morning, disturbances arose in Taipingshan. In searching house-to-house for plague cases, sanitation officers were showered with stones, bricks and rubbish.⁴³ That same day, a mob gathered in the offices of Po Leung Kuk and broke windows. The next day, similar violence continued. The riot broke bounds and made the work of investigating and disinfecting extremely difficult and unsafe.⁴⁴

That same Sunday morning, 20 May, a large meeting was held at Tung Wah Hospital, with 70 members of leading Chinese firms in the colony and some four hundred others present. The captain superintendent of the police and the Colonial Surgeon attended the meeting on behalf of the government.⁴⁵ Mr. Lau Wai Chun (Liu Weichuan, 刘渭川),⁴⁶ the then Director of the Tung Wah, chaired the meeting. This was ostensibly a meeting between the colonial government and well-to-do local Chinese. The latter represented the general Chinese community and petitioned the government to change legal tack in combating the plague. They asked that the government allow Chinese patients to go back to Canton, and that it change the methods used in visiting houses.⁴⁷ But before the meeting reached any consensus, it was interrupted by a message about the destruction of Lau Wai Chun's shops in Bonham Street. As a member of the Sanitary Board, Lau was accused of not protecting the interests of his countrymen.⁴⁸ He left the Tung Wah in haste, and the meeting then broke up. Stepping out of the Tung Wah, Lau Wai Chun got into his sedan-chair. Suddenly, he was

⁴¹ E.G. Pryor, 'The Great Plague of Hong Kong', in *Journal of the Hong Kong Branch of the Royal Asiatic Society*, vol.15 (1975), pp. 61-70, p.64.

⁴² *The Hong Kong Telegraph (HKT)*, 20 May 1894.

⁴³ *DP*, 20 May 1894.

⁴⁴ 'Threatened Riots in Chinatown', *DP*, 21 May 1894.

⁴⁵ *HKWP*, 24 May 1894, p.403.

⁴⁶ Lau Wai Chun was a director of the Tung Wah Hospital in 1884, chairman of Po Leung Kuk in 1887 and was appointed to the district watch committee and the Sanitary Board in 1892. He resigned from the Sanitary Board in November 1894. He was a comprador of the Hong Kong and Shanghai Bank from 1892 but had his own Australia and California trade. He went bankrupt in 1907, see Sinn, 2003, p.160.

⁴⁷ The colonial government did not, however, allow Chinese patients to leave, on the grounds that the Canton authority might not accept plague-afflicted Chinese. See 'Meeting in the Tung Wah Hospital', *DP*, 21 May 1894. Chinese attendants suspected that the real reason for not allowing Chinese to leave was the need to maintain the labour force of the colony and to minimise economic losses. See Sinn, 2003, p.166.

⁴⁸ 'Meeting in the Tung Wah Hospital', *DP*, 21 May 1894.

surrounded by a Chinese mob, and his sedan was turned upside down. Mr. Lau hurried back into the Tung Wah.⁴⁹

Later, the Committee of the Tung Wah issued a notice that the colonial government had consented to allowing Chinese plague patients to be treated by the Tung Wah doctors. All infected patients, furthermore, would be transferred to a temporary hospital on the site of a glass factory in Kennedy Town in the western part of Hong Kong Island, and would be treated by Chinese doctors instead of being sent to the Hygeia or other western hospitals. But the government would not stop house visitation, and anyone who failed to report cases of the plague would be punished. The notice did not address the issues of whether Chinese patients were permitted to leave Hong Kong. The notice placated Chinese to some extent. There was no further violence on Sunday evening.⁵⁰ The Chinese were not satisfied, however, as the colonial government of Hong Kong had only made a small compromise in response to Chinese demands. Even these compromises were not really concessions. As an English newspaper pointed out, 'the Government had not completely abrogated their authority even over the Chinese hospital at the Glasswork.'⁵¹ Indeed, the Tung Wah Hospital and Glassworks hospital were both under the close supervision of western medical authorities throughout the epidemic.

Rumours

Meanwhile, rumours started to spread. On Monday, 21 May, Dr. E.J. Eitel, the Inspector of Schools, noticed the panic at Chinese schools, incited by the following rumours:

That the government intended to select a few young children from each school to subject them to a surgical excision of the liver in order to obtain bile, this being the only known remedy for curing the plague; that some schools would be visited by officers who would examine every child and send to the 'Hygeia', anyone having the least boil or pimple on its body.⁵²

'Ridiculous as these rumours appear to Europeans, they seem very plausible to ignorant Chinese,' Dr. Eitel commented, since 'distrust of the Government is still rampant among the lower classes of Chinese'.⁵³

Rumours also spread among Chinese coolies and servants. European families

⁴⁹ 'The Disturbances—Police Court Proceedings', *CM*, 22 May 1894.

⁵⁰ 'Threatened Riots in Chinatown', *DP*, 21 May 1894.

⁵¹ *HKWP*, 24 May 1894, p.404.

⁵² Report from the Inspector of Schools on 22 May 1894, Enclosure no. 1 in Despatch no. 122 from Robinson to Secretary of State, 23 May 1894, CO129/263, p.190; PP.HC. 1894 [C.7461], p.12.

⁵³ Note 52 above.

complained that Chinese servants 'left the employ in a terrible fright to take their wives out of the Colony'.⁵⁴ The Chinese were informed that a 'Chinese woman was sent to the Hygeia by Sanitary Authorities supposed to be suffering from the plague, but which proved to be a case of pregnancy.'⁵⁵ It was alleged that this fatal mistake took away the poor Chinese woman's life.

Rumours also arose outside Hong Kong. It was reported that offensive and insulting placards had been posted in Canton warning against going to Hong Kong for fear of women and children being cut up by foreign doctors.⁵⁶ Robinson telegraphed the consul at Canton for confirmation about these placards. The Consul replied that

Many of them (placards) merely represent the inconvenience to which any persons suspected of suffering from the prevalent disease are exposed through the activity of the Colonial Sanitary Authorities; but two of the placards state that eyes are scooped out, and pregnant women are cut open, and are obviously published with the object of inflaming the public mind against the Hong Kong authorities.⁵⁷

The Consul at Canton further confirmed that 'these mischievous papers emanate from Hong Kong'. The Governor hoped the Chinese viceroy at Canton could help the Hong Kong government in dispelling the rumours. But the viceroy at Canton seemed reluctant to cooperate with the colonial government of Hong Kong.⁵⁸

Petitions

Desperate Chinese in Hong Kong resorted to violence and rumours in fighting the colonial government's anti-plague measures. Neither side was wrong, but the misunderstanding between the government and the Chinese community, especially poor Chinese, was deep. Education and communication would eventually remove the mutual distrust. At that time, though, the prominent Chinese shouldered the task of communicating with the government as their opinions would be heeded. The Tung Wah Hospital once again stepped to the fore. On 22 May 1894, the directors of the hospital, together with other Chinese figures prominent in Hong Kong, presented the Governor with a lengthy petition, demanding

⁵⁴ 'Alleged Singular and Fatal Mistake', *HKWP*, 24 May 1894, p. 405.

⁵⁵ Note 54 above.

⁵⁶ 'Telegram sent to Her Britannic Majesty's Consul at Canton on 24 May 1894', Enclosure no. 1 in Despatch no. 128, 29 May 1894, CO129/263, p. 251; PP. HC. 1894 [C.7461], p.15.

⁵⁷ 'Her Britannic Majesty's Consul at Canton to Colonial Secretary', 25 May 1894, Enclosure no. 4 in Despatch no. 128, CO129/263, p. 254; PP. HC. 1894 [C.7545], p.15.

⁵⁸ The reasons for the Chinese viceroy's reluctance will be addressed later. Suffice it to say here that the rumours complicated anti-plague efforts in Hong Kong.

That house-to-house visitation should at one be stopped, as Chinese women and children were frightened out of their wits by the daily visits of the military and police;
 That sick persons should be allowed to return to their own country;
 That the sick on hulk 'Hygeia' should be removed to the new Tung Wah Hospital (the Glassworks hospital), and
 That all sick persons should be sent to the Glassworks Hospital.⁵⁹

The directors' petition expressed the demands of poor Chinese in Hong Kong. On this occasion, the hospital stood on the side of poorer Chinese. Thus pressed by both poor and elite Chinese residents of Hong Kong, would the colonial government change its preventative measures and withdraw the bye-laws?

2. Colonial response to the disturbance

2.1 A decisive 'No' to Chinese requests

The answer of the Hong Kong colonial government was a decisive 'no'. The Governor believed that the sanitary regulations were 'absolutely necessary to safeguard, as far as possible, the health of the entire population'.⁶⁰ Robinson held the opinion that 'if the petitioners' prayer was granted, it might result in much unnecessary loss of life'.⁶¹ As the Governor was responsible for the safety of the community, he felt obliged to decline even to entertain their requests.⁶² The hospitals' directors were further reminded by Robinson, in strong terms, that 'Hongkong was a British Colony and, as they had chosen to reside in it, they must submit to British laws and methods of sanitation.'⁶³

It is a remarkable stroke of fate that at this crucial juncture, the helm of government

⁵⁹ Despatch no.121, from Robinson to Secretary of State, 23 May 1894, CO129/263, p. 178; PP. HC. 1894[C. 7461], p.8.

⁶⁰ Note 59 above.

⁶¹ *DP*, 23 May 1894.

⁶² Despatch no.151, CO129/263, p.461, paragraph 10; PP. HC. 1894 [C. 7545], p.2.

⁶³ Note 62 above. Sir William Robinson (1836 - 1912) was a British colonial governor who was the last Governor of Trinidad and the first Governor of the merged colony of Trinidad and Tobago. He was also the 11th Governor of Hong Kong. In 1891, Robinson was appointed Governor of Hong Kong, a position he served until 1898. This was Robinson's last post in the Colonial Services. He was the governor of Hong Kong who served the longest term. During the time of 1894 plague, Robinson repeatedly emphasised that Hong Kong was a British Colony, and the government would not allow Chinese 'peculiar mode of life' which in Europeans' opinion disregarded all necessary sanitary principles to endanger Hong Kong's public health, so that Chinese must submit to British laws and methods of sanitation. See Despatch no.151, from Robinson to Secretary of State, 20 June 1894, CO129/263, p. 462, paragraph 10; [Governor's speech] in *HKH*, 11 July 1894. As we will see in this Chapter, this statement explicitly indicated that plague came, Chinese 'peculiar sanitary habits' must be swept away and western style public health must be enforced as thoroughly as possible.

should be in the hands of one as insensitive as Governor William Robinson.⁶⁴ The committee of Tung Wah Hospital represented the general Chinese community in submitting the petition. If the Governor could give the Tung Wah a willing ear and make some concessions, the subsequent violent conflicts might be avoided. However, drawing attention to their status, the Governor further pointed out to these affluent and educated Chinese that ‘as residents of Hongkong it was their bounden duty to aid the Government in the terrible crisis in which it was placed and not to obstruct it, or to allow their people to obstruct it, in any way whatever.’⁶⁵ A proclamation was subsequently issued to inform the Chinese population of the Governor’s response to the petitions. After explaining the necessity of the government’s precautions in combating the plague, the Governor commanded the Chinese ‘to give every assistance in your power, and not in any way to impede or obstruct the sanitary inspectors and others in the visitation of your rooms and houses, the removal of the sick and dead, and the necessary cleansing and disinfection’.⁶⁶

The Governor said that the Chinese delegation ‘left the Government House apparently satisfied’. But in a few days’ time, ‘defamatory and libellous placards were posted up in Hong Kong and later on in larger numbers in Canton attributing the most ghastly cruelties to the English doctors...’.⁶⁷ The Governor suspected that the Committee of the Tung Wah Hospital was just like the vicar of Bray.⁶⁸ Fearing rumours would inflame the passions of the mob in Taipingshan, the Governor requested the commodore to anchor a gunboat opposite the Tung Wah Hospital and Taipingshan. A notice was issued to the effect that the rumours were absolutely unfounded, and the culprits would be arrested and severely punished.⁶⁹ A generous reward of \$200 was offered for any information which would lead to the discovery and arrest of the author of these malicious placards.⁷⁰ Relations between the colonial government and the Chinese community were tense.

The display of military power and the reward for information about those responsible

⁶⁴ Sinn, *Power and Charity*, 2003, p.167.

⁶⁵ Note 62 above.

⁶⁶ Proclamation, Enclosure 1 in Despatch no.121, 23 May 1894, CO129/263, pp.180-181.

⁶⁷ Despatch no.151, 20 June 1894, CO129/263, pp.461-462; PP.HC. 1894 [C7545], p.2.

⁶⁸ The Governor later received information that Chinese ‘literati’ were to a degree responsible for the rumours and had taken up spreading them again in Canton. Despatch no. 151, CO129/263, p. 463, paragraph 14; PP. HC. 1894 [C. 7545], p. 3.

⁶⁹ Despatch no.122, from Robinson to Secretary of State, 23 May 1894, CO129/263,p. 188; PP. HC. 1894 [C.7461], p.12.

⁷⁰ Despatch no. 128, CO129/263, p.249; PP. HC. 1894 [C.7461], p.15.

for the placards quelled the situation; no more placards appeared.⁷¹ On 26 May, two complimentary letters from the colony's Chinese Justices of Peace and merchants were sent to the colonial government.⁷² Messrs. Lockhart and May were praised for their success in suppressing the riots, which had been stirred by Chinese coolies, in the estimation of the letters' writers. In ingratiating themselves to the colonial government, these elite Chinese might have sought to dispel government doubt about where their loyalties lay. Tranquility was temporarily restored to the Chinese community. The threatening of imperial power might help to enforce British law but failed to gain hearts of Chinese subjects.⁷³ Under the cover of this temporal tranquility, further conflict was brewing.

2.2 'An unexampled calamity'

The plague continued, peaking in June and early July. On 4 June, the Governor informed London that no diminution had occurred, and the official death tally was revised to 735.⁷⁴ He also reported that a Captain Vesey of the Shropshire regiment had died from plague on that very day.⁷⁵ Vesey's death provoked panic amongst the European community; Europeans had previously thought they were immune to the plague.⁷⁶ Many escaped the

⁷¹ Despatch no.151, CO129/263, p.462, paragraph 12; PP. HC. 1894 [C. 7545], p.2.

⁷² Copies of translation of letters were attached to Governor's despatch as enclosures No.1 and No.2 respectively: 'A respectful letter from the justice of the peace and merchants of Hongkong to the Honourable J. H Stewart Lockhart, ranking as a Taotai' and 'A respectful letter from the justices of Peace and merchants of Hong Kong to Mr. May, the Captain Superintendent of Police'. See Despatch no.125, from Robinson to Secretary of State, 26 May 1894, CO129/263, pp.203-206. 72 signatures were followed the two letters. The Secretary of State also noticed that Lockhart was called as a 'Taotai', a Chinese official title by Chinese subjects, and commented that 'surely Mr. Lockhart would not accept a foreign order', see Despatch no.125, CO129/263, p.203.

⁷³ The Amoy News quoted complains from those Chinese who fled Hong Kong to Amoy, 'The colonial government did so just for their own interest and Europeans' safety, for instance setting up quarantine to prevent the plague to European reservation district. They (Chinese) said if they could get an English port, and ruled it according to Chinese law, they would display to English if a Chinese soldier intruded his wife's room, how would that English gentleman feel?' *DP*, 27 June 1894. But the colonial government refused to soften any of its preventive measurements. In November 1901, more than twenty Chinese ladies representing hundreds of Chinese women protested the measurements of house visitation, disinfection under the new Public Health Ordinance 1901 by reading aloud their petitions outside the Registrar-General's Office, but in vain. See Ziying Yang ed., *Xianggang de huigu (Looking back Hong Kong)*, Xianggang: Yayuan chubanshe, 1984, pp.61-62.

⁷⁴ Despatch no.132, from Robinson to Secretary of State, 4 June 1894, CO129/263, p. 276; PP. HC. 1894 [C.7461], p.17.

⁷⁵ Despatch no.132, CO129/263, p.280; PP. HC. 1894 [C.7461], p.18.

⁷⁶ Choa, 'The Lowson's Diary', p.135.

colony for Japan and England.⁷⁷ The exodus of panic-stricken Chinese continued unabated.⁷⁸ The colony faced a severe labour shortage. Business came to a standstill. Every branch of business was affected by the plague. On the whole, the shipping interests were mostly affected by the plague quarantine. 'Without exaggeration', the Governor asserted, 'as far as trade and commerce are concerned the plague has assumed the importance of an unexampled calamity.'⁷⁹

2.3 From bye-law to ordinance

As a colony heavily reliant on international trade, Hong Kong could not easily bear the cost of a prolonged plague. The Governor accordingly urged more stringent measures to stamp out the disease. On 31 May, the Sanitary Board was summoned to draw up additional bye-laws; they were confirmed in Executive Council the same afternoon.⁸⁰ The bye-law of 31 May dealt with the disinfection of premises, the expense of disinfection and cleaning of infected houses and the recovery of these expenses, as well as the housing and board of those removed from infected housing. The additional bye-laws also empowered the permanent committee under the Sanitary Board to take possession of buildings for thorough disinfection.⁸¹ In order to remove any doubts about the validity of the bye-laws, and to protect those who had acted under the bye-laws, an ordinance to ratify the Sanitary Board's bye-laws was tabled in the Legislative Council. On 11 June 1894, after three readings in the same meeting, the bill was passed as Ordinance No. 5 of 1894.⁸² This was exceptional as, normally, the first and second readings would occur at different meetings.

The swift issue of Ordinance No. 5 reflected the government's firm determination to eradicate the plague. Under the new ordinance, the permanent committee gained the additional power to 'take possession of any unoccupied lots, generally for the purpose of removing thereto people who have, owing to the existence of the plague, been obliged to remove from their homes'.⁸³ In other words, the Sanitary Board not only had the power to visit and disinfect Chinese houses; it could also remove and relocate bodies and property. The expenses incurred during disinfection and relocation under the bye-laws was to be borne

⁷⁷ Note 76 above.

⁷⁸ Despatch no.132, CO129/263, p. 276; PP. HC. 1894 [C.7461], p.18.

⁷⁹ Despatch no.151, 20 June 1894, CO129/263, p.470, paragraph 32; PP. HC. 1894 [C.7545], p.5

⁸⁰ Despatch no.132, CO129/263, 4 June 1894.

⁸¹ 'The Additional Bye-laws', *HKGG, Extraordinary*, 31 May 1894.

⁸² 'Ordinance No.5 of 1894', *HKGG*, 16 June, 1894.

⁸³ *HKH*, 11 June 1894.

by the owner or occupant.⁸⁴ Although the colony offered free treatment for all those stricken by the plague, the costs of preventative measures mainly fell to house owners. The new law did not prescribe whether the owner of the property had a right to be compensated for any damages incurred during disinfection or relocation. In other words, under Ordinance No. 5, it was primarily private individuals rather than the government who paid the cost of the public good. What had been least expected by Chinese householders had now become law.

3. Conflicts between Chinese and western medicine

3.1 *Revenge in Canton*

The colonial government's strengthening of anti-plague measures stoked anti-foreign feelings amongst the Chinese residents of Hong Kong. Disappointed by the government's refusal even to entertain Chinese petitions, the local Chinese population resorted to mainland resources. Numerous inflammatory placards against the Hong Kong government's measures were posted throughout Canton, the administrative capital of Guangdong Province. The Governor received information that Chinese 'literati' or gentry were responsible for disseminating these 'disgusting statements'.⁸⁵ This time, not only medical professionals were accused; the 'red-haired barbarians' (that is to say, all Caucasian 'foreigners') were generally under fire. The Hong Kong government was warned that 'if any portion of Taipingshan was burned down, an attack would be made upon the Consulate at Canton.'⁸⁶ Actually, two American lady-missionary doctors had already been brutally attacked by Chinese mobs in Canton.⁸⁷ In order to calm anti-foreign sentiment, Robinson sought assistance from the Chinese Government. The Viceroy of Canton, Li Hanzhang (李汉章),⁸⁸ was asked to remove

⁸⁴ Article 6 of the Additional bye-laws of 31 May 1894.

⁸⁵ Gentry (Shen, 绅) was local elite in traditional Chinese society. They acted as the bridge between the magistrate and the local community, settled disputes, conducted fund-raising campaigns and provided education and welfare of all kinds. Gentry usually defined as degree-holders. But scholars have found that in region groups especially among overseas Chinese, it was the men other than degree-holders but of 'wealth, power and influence' who often performed these functions. In the case of Hong Kong, the Tung Wah Hospital Committee was the local elite and often played a bridge between the colonial government and Chinese community. The committee members were not degree-holders of the late Qing dynasty, and were called merchant-gentry (*shenshang*, 绅商) among local Chinese in colonial Hong Kong. See Sinn, 2003, p.82; James Hayes, 'Secular Non-Gentry Leadership of Temple and Shrine Organizations in Urban British Hong Kong', 23 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 1983, pp. 113-136.

⁸⁶ Despatch no.151, CO129/263: 463, paragraph 14; PP. HC. 1894 [C. 7545], p.3.

⁸⁷ Despatch no.151, CO129/263: 463, paragraph 15; PP. HC. 1894 [C.7545], p.3.

⁸⁸ Li Hanzhang was the elder brother of Li Hongzhang (李鸿章), a leading statesman of the late Qing Empire.

these libelous and malicious placards.⁸⁹ A Chinese proclamation was subsequently issued to this effect. But Robinson was not satisfied with Li's efforts: in Robinson's view they were too general to have any real effect.⁹⁰ It later turned out that Viceroy Li was personally sympathetic to the position of the Chinese residents of Hong Kong. In his telegramme to Peking, Li Hanzhang explained in some detail why he was reluctant to co-operate with the colonial government.⁹¹ With little help from the government in Canton, Robinson therefore sought succour from the British minister at Peking, requesting that the issue be put to the Tsungli Yamen (Zongli Yamen, 总理衙门).⁹²

After receiving Robinson's request, British ministers visited the Tsungli Yamen at Peking on 19 June 1894.⁹³ During this interview, Chinese ministers handed a copy of Viceroy's Li's telegrammed to the British minister. Chinese officials expressed their 'keen anxiety with regard to the state of public feeling in Canton' and 'acknowledged the excellent intentions shown in the treatment of the sick, the purification of houses, drains etc' taken by the colonial government. In the face of stubborn popular feelings in Hong Kong, though, the Chinese government officials also hoped the Robinson government would 'consider the probability of some modification of the regulations'. Finally, the Chinese ministers suggested that the colonial government communicate with the directors of the Tung Wah Hospital and asked the latter to issue a proclamation clearly explaining the nature and object of the sanitary measures. They believed this would have a great effect amongst ignorant poor Chinese in Hong Kong.⁹⁴ After this meeting, the British minister immediately telegraphed Robinson and informed him of the Tsungli Yamen's suggestions.⁹⁵

3.2 Chinese need a Chinese hospital

⁸⁹ Despatch no.128, from Robinson to Secretary of State, CO129/263, 29 May 1894.

⁹⁰ Note 89 above.

⁹¹ A translation of the telegrammed from Viceroy of Canton to Tsungli Yamen, 18 June 1894, enclosed in Despatch No.168, CO129/263, 11 July 1894, pp. 555-557.

⁹² The Tsungli Yamen was the government body in charge of foreign affairs in imperial China during the late Qing dynasty. It was established by Prince Gong (Gongqinwang, 恭亲王) in 1861, following the Convention of Peking. It was abolished in 1901 and replaced with a Foreign Office of ministry rank.

⁹³ 'Letter from H. M's Minister at Peking to H.E. the Governor of Hong Kong', 21 June 1894, enclosed in Despatch no.168, 11 July 1894, CO129/263, pp.553-554.

⁹⁴ Despatch no.168, CO129/263, p.554.

⁹⁵ 'Telegram from Mr. Brenan, Minister at Peking to Governor of Hong Kong', 20 June 1894, Enclosed 1 in Despatch no.152, from Governor to Secretary of State, 21 June 1894, CO129/263, p.483.

As soon as he received the telegraph from the minister at Peking, Robinson at once sent for the directors of Tung Wah Hospital, telling them that

The Tsung-li-Yamen [*sic*] was not only extremely anxious in regard to the state of public feeling which had been aroused here and elsewhere by the scandalous placards and reports that had been spread Broad Cast over the country but that the Chinese Government had suggested that the Directors of the Tung Wah Hospital should issue a notification which would calm people's minds.⁹⁶

Robinson demanded that this notification could come only from Tung Wah, plainly stating that 'from their personal observation the treatment of the Chinese in the European Hospitals here (in Hong Kong) had been of the kindest and most human description and that all statements to the contrary were absolutely false.'⁹⁷ After the Governor's approval, the Tung Wah's proclamation was posted throughout the colony and Canton.

It is a pity that the available evidence provides no information about Tung Wah's directors' reaction to the Governor's demand.⁹⁸ Whether the Directors of Tung Wah had been involved in the circulation of the rumours, whether they were sincere in praising western medical treatment of Chinese as stated in the proclamation: this is unclear. Under pressure from both Chinese and Hong Kong governments, a proclamation was nevertheless issued by the directors of Tung Wah.⁹⁹

Through a diplomatic approach, the colonial government successfully used the influence of the hospital to disperse Chinese threats to the Government's 'drastic sanitary measures'. Making use of the leadership of the most important local Chinese hospital in order to confirm the good intentions of the colonial government had an arguably 'salutary effect', calming the fears of ignorant and illiterate Chinese.¹⁰⁰

Two days later after the Tung Wah issued its proclamation, a Chinese hospital funded by a founding Director of the Tung Wah Hospital was opened at Lai-chi-kok (荔枝角,

⁹⁶ Despatch no. 152, 21 June 1894, CO129/263, pp.480-481.

⁹⁷ Despatch no.152, CO129/263, p.481.

⁹⁸ The Tung Wah Hospital has kept detailed records of its activities ever since its establishment in 1870. But several fires ruined many documents from the nineteenth century. The remaining documents are now kept in the Museum of the Tung Wah Hospital. After a survey of the available archives, this study could not find direct information of the Tung Wah Hospital's activities in the 1894 plague except the statistics of plague patients treated by Chinese doctors.

⁹⁹ See the translation of the Tung Wah's Proclamation, dated 18th day, 5th Moon, 20th year of Kwong Sü [AD 21 June 1894], enclosed in Despatch no.152, CO129/263:484.

¹⁰⁰ In his despatch to the Secretary of State, Robinson was pleased to report the possible good effect of the Tung Wah's proclamation. But even the Colonial Office doubted the willingness of Tung Wah's directors to issue such a proclamation which was ostensibly 'dictated' by the Governor. [Minute by G. W. Honson on F.O. to C.O.], 20 September 1894, in CO129/265, p.396.

Lizhijiao) on Kowloon Peninsula, just across the harbour.¹⁰¹ Large patients turned up in the first few days largely owing to the pure Chinese medical treatment there and the convenience for patients' family to visit. As its own hospital was increasingly under government control, the Tung Wah Committee also saw the Lai-chi-kok hospital as a viable alternative and actively hired boats to take patients across.¹⁰² This went on until the police discovered the hospital, and a police cordon was introduced. Boatmen caught were prosecuted for failing to report plague.¹⁰³ For the colonial government, this was aimed at keeping a record of plague cases, which was a crucial measure for preventing contagious disease according to western public health theory. But the Chinese residents of Hong Kong saw this prosecution as a punishment for merely relying on Chinese traditional medical treatment and customs. Tension mounted again.

At this juncture, the Hong Kong General Chamber of Commerce (HKGCC) brought the matter to the Governor and pointed out the economic significance of making concessions to Chinese.¹⁰⁴ If the Lai-Chi-Kok hospital was closed, the exodus of Chinese would continue and brought further loss to Hong Kong's business. After meeting with the HKGCC, the Governor withdrew the cordon subject to case reporting. The Tung Wah Committee was more than happy to this new policy and lost no time to suggest further arrangement for the great comfort, safety, and convenience of Chinese patients.¹⁰⁵ But the Chairman of the permanent committee of the Sanitary Board, J. J. Francis, refused to make any concession on the ground of that the Lai-chi-kok hospital could be a source of re-infection.¹⁰⁶ Apparently, Francis' insistence was based on the presumption that Chinese method of treatment was dangerous to Hong Kong's public health. Although sharing this common assumption with Francis, as Governor, Robinson had to take wider socio-economic impact of sanitary regulations into account. This time, the fight was between Governor and the Sanitary Board. It was not until Francis paid a visit and was satisfied with the new sanitary arrangement there, that the Lai-chi-kok hospital was re-opened on 12 July, 1894.¹⁰⁷ But by these new

¹⁰¹ *DP*, 2 July 1894.

¹⁰² Quoted from Sinn, 2003, p.178.

¹⁰³ Note 99 above.

¹⁰⁴ Note 99 above. The HKGCC was founded in 1861 by 62 leading European companies and banks. It was a predominantly European business organisation. From 1883 onwards, the HKGCC was invested to elect a un-official member to the Legislative Council, thus became one of the most influential organisations in colonial Hong Kong in terms its influence in policy-making and promoting business.

¹⁰⁵ *CM*, 2 July 1894.

¹⁰⁶ *DP*, 3 July 1894.

¹⁰⁷ *HKT*, 12 July 1894.

arrangements, the Lai-chi-kok hospital became a more western style hospital, which was resisted by Chinese patients.

3.3 Doubting ‘superiority’ of western medicine

For Chinese in the nineteenth century, it was far from clear that western medical science was the best approach for combatting public health problems such as the plague. Indeed, Chinese distrust of western medicine played an important role in the protests against the colonial government’s sanitation laws. Remember that the Viceroy of Canton was not eager to cooperate with the colonial government at the time of plague. In his telegraphed message to Peking, Li Hanzhang explained his reluctance:

The foreign officials at Hong Kong are treating the plague in the foreign method. Any Chinaman taken with the plague is immediately seized and placed in a hulk ... fumigated with sulphur, and given iced water to drink. His relatives are not permitted to go to see him; and Chinese doctors are not allowed to treat his complaints. After death, he is buried in time; his family is not allowed to take his corpse away and buried it in a coffin. Two or Three hundred persons are thus collected in a house, and sit on the bare ground hopelessly awaiting death. The result is that great numbers are periling. Each day police are sent to make inspection street by street. Should they find the sick man in a house, they at once force him to move out and they destroy the building and burn the clothes and belongings of the patient. These poor people, if they recover, have therefore no home or property, and suffer unspeakable misery.¹⁰⁸

Li Hanzhang emphasised that his detailed report was true, witnessed first-hand by the ‘Directors of the Benevolent Society’ at Hong Kong.¹⁰⁹ Like many other Chinese at the time, Li did not believe in foreign methods. Without popular understanding, if not acceptance, all British anti-plague endeavours were seen as ‘strange, ruthless and brutal’ treatment to the Chinese. Viceroy Li ‘told Consul Brenan to send word to Hongkong, but although they agreed to adopt Chinese methods, it was an empty promise.’ Therefore, Viceroy Li ‘ordered the Benevolent Society Directors to move to Canton the sick Chinese in ships for treatment.’¹¹⁰ This arrangement, as seen above in Section B, had helped to calm the disturbances in Hong Kong in May 1894.

When Governor Robinson read Viceroy Li’s letter on 11 July 1894, he was astonished

¹⁰⁸ A translation of the telegraphed from the Viceroy of Canton to the Tsung Li Yamen, 18 June 1894, enclosed in Despatch no.168, 11 July 1894, CO129/263, pp. 555-557.

¹⁰⁹ Although the current study has not found direct evidence to support this, indirect evidence indicates that this ‘Benevolent Society’ was indeed the Tung Wah Hospital: e.g. in the meeting held on 21 May 1894, Mr. Lau Wai Chuen, the Director of the Tung Wah Hospital, had volunteered to negotiate with the Canton government to arrange Chinese patients’ return to mainland.

¹¹⁰ Note 109 above.

by the official's ignorance. He commented that 'the Viceroy must either be a corrupt or an ignorant official, and one quite unfitted from a civilized point of view to hold the high office to which he has attained.'¹¹¹ Irritated by the Viceroy's duplicitous policy, Robinson further complained to the Secretary of State that 'it [Li's telegrammed] may lead your Lordship to the conclusion that to treat them [Chinese] as civilized people, in our sense of the term, is a concession which has but little justification, and is perhaps a policy which they simply regard as a sign of inherent weakness on our part.'¹¹² Robinson would not know that when he accused viciously of Viceroy Li's 'ignorance and ruthlessness', himself also obtained a reputation for riding roughshod over the Chinese.¹¹³ Behind the dispute between the Chinese and British officials was indeed a competition between two different medical systems which might be complementary to each other, but in a time of crisis, in the particular colonial setting of Hong Kong, Chinese method had to give way to the 'superior' and 'scientific' western medical approach.

The Colonial Office's reaction to Viceroy Li's letter and Robinson's complaints was sensible. On the minute to this despatch, the Secretary of State wrote that

After reading it, I am inclined to think that it would be well not to write to the Governor querying the treatment of the Chinese, as suggested in my minute on 14135. There are evidently two opposite views on the subject. I think we may as well let it drop.¹¹⁴

It seems that the Secretary of State had suggested the Governor investigate the treatment of Chinese and compares the effectiveness of Chinese and western medical approaches from a purely scientific perspective. After a careful study of the correspondence, however, the Secretary of State realised that there were 'two opposite views on this subject', and it was impossible to reconcile these two views.

In May 1894, an experiment had actually been conducted to compare the efficacy of Chinese with western medical treatments for the plague. There had been two groups of Chinese patients: one treated by Chinese methods and the other under western medical treatment. It turned out that the mortality under Chinese medical treatment was about 20% lower than the group treated by western doctors. The colonial government did not trust the result, and other sample patients were found and divided into two groups. Again the mortality rate for those undergoing Chinese treatment was lower than those under western methods. Although Chinese medicine could not give a scientific explanation for its treatment,

¹¹¹ Despatch no.168, from Robinson to Secretary of State, CO129/263, 11 July 1894.

¹¹² Note 111 above.

¹¹³ Sinn, 2003, p.189.

¹¹⁴ See the Minute to the Despatch No.168, 11 July 1894, CO129/263, p.548.

it proved to be empirically effective. After this experiment, the colonial government allowed Chinese doctors to treat Chinese patients in the Glasswork hospital, though still under the watchful supervision of western medical professionals.¹¹⁵

Even among western medical professionals there were some who doubted the superiority of western medicine over the Chinese approach. The ‘special correspondent’ of the *British Journal* had this to say:

That the disease runs its course in spite of medicinal treatment, in spite of disinfectants; and the spasmodic effects of chaotic sanitation, we all know; still we strive and struggle and make rules and have by-laws, and believe when the epidemic is over that much good has been done thereby, ... Here in Hong Kong we spent thousands of dollars upon disinfectants We shut up houses, we walled-up a whole district, we condemned this and destroyed that, we burnt furniture, we whitewashed everywhere and everything, we scraped out houses, opened up drains; still the plague lasted four months, and – and what? In the neighbouring city of Canton the disease waned and disappeared at the same time as in Hong Kong.¹¹⁶

The choice between Chinese and western medicine was a controversial one. Socially, if there was no consensus and the government pushed too much, a matter of science might become a complicated issue of politics. As seen in the above sections, all the anti-plague laws were grounded in western medicine and were fiercely opposed by many Chinese. The bubonic plague was a crisis, under cover of which the colonial government pushed the Chinese community of Hong Kong to accept the new regime. In so doing, it laid bare the conflicts between western and Chinese medicine in the colony.

4. Chinese ways had to go

4.1 Chinese ‘peculiar mode of life’

Under the threat of the plague, another bill of ‘drastic character’ was passed: the Taipingshan Resumption Ordinance of 1894. This ordinance gave the colonial government extensive powers to regulate unsanitary Chinese houses in the Taipingshan district. In fact, under the Ordinance, ten acres within the walled Taipingshan were razed. More than 380 houses were destroyed, mainly by fire, and re-built along more sanitary lines. One legislator

¹¹⁵ Starling, *Plague, SARS and the Story*, p.29. Besides, according to Yang’s research, the mortality of plague cases treated by Chinese medicine in the Tung Wah’s glasswork hospital and western medicine in the Hygia and Kennedy Town Hospital was also of no apparent difference, with the former 76.47% and the latter 77.77%. See Xiangyin Yang, ‘Zhimin quanli yu yiliao kongjian: xianggang donghua sanyuan zhongxiyi fuwu bianqian (1894-1941)’ (‘Colonial Power and Medical Space: The Transformation of Chinese and Western Medical Services in the Tung Wah Group of Hospitals, 1894-1941’) Ph.D. diss., Department of History, Chinese University of Hong Kong, 2007, pp.79-81.

¹¹⁶ ‘The Plague in Hongkong (from our Special Correspondent)’, in *The British Medical Journal (BMJ)*, 8 September 1894, p. 539.

commented that it was the first time in the history of the colony that ‘a Bill of this nature has been brought before this Council, authorizing the Government to resume from the Crown Lessee so large an area of land and entailing so heavy an expense’.¹¹⁷ In the 1870s and 1880s many sanitation laws aiming to improve Taipingshan had failed to achieve their goals. Now, under the threat of the plague, the Taipingshan Resumption Ordinance was passed and enforced in due time.¹¹⁸ It is interesting to see how the colonial government seized the opportunity of the plague to initiate a dramatic public health project in colonial Hong Kong.

On 11 June 1894, Robinson delivered an important speech entitled ‘The Future Policy of the Government’ to the Legislative Council.¹¹⁹ The main purpose of the speech was to persuade the public (viz. the Legislative Council) to support the proposed Taipingshan Resumption Ordinance through all its stages. Before he declared the purpose of the ‘drastic bill’, the Governor first explained the government’s position, declaring that ‘[T]his is a British Colony and it will always remain one.’ Obviously, the Governor’s emphasis of Hong Kong as a British colony was to remind the public that Hong Kong was in the hands of British colonists, not those of the Chinese. As for the Chinese of Hong Kong, Robinson said,

We are very pleased to see living amongst us a number of the lower class of Chinese, who as a rule are very orderly, industrious, and useful people. We are also glad to welcome amongst us honest and energetic Chinese merchants, who assist and share, as they hitherto have done, in the prosperity of the colony.¹²⁰

In Robinson’s estimation, members of the local Chinese community in Hong Kong were mere guests in Hong Kong. If they were orderly and useful, they were welcome to live with Europeans. But when the Chinese and ‘their peculiar mode of life’, with its ‘disregard of all sanitary principles’ constituted a threat to the colony’s public health, their status as guests was significant. Therefore, ‘it certainly was the duty of the Government to take care the health of the community’, and to ensure that ‘the health of the community would not suffer by in any way by their residence amongst us’.¹²¹

¹¹⁷ *HKH*, 27 August 1894.

¹¹⁸ The Taipingshan Resumption Ordinance was introduced in June 1894, passed in September and came into operation on 15 October 1894.

¹¹⁹ *HKH*, 11 June 1894.

¹²⁰ Note 119 above.

¹²¹ Note 119 above. Compare Robinson’s with Hennessy’s speech in 1881. Hennessy had emphasised Hong Kong’s status as a British colony that belonged to the Chinese, especially as Chinese were ‘permanent inhabitants in Hong Kong’ and ‘contributed nine-tenths of the Government’s revenues’. Hennessy had, therefore, insisted the government should respect Chinese traditions, including Chinese-style sanitation and not to change Chinese according to British public health laws and principles. See ‘Speech of His Excellency the Governor [Hennessy] on the Census Returns and the Progress of the Colony’, in *HKGG*, 3rd June 1881,

The Governor believed that it was the ‘peculiar mode of life’ of the Chinese that had conspired in the plague’s outbreak. This belief appeared well grounded in medical and sanitary evidence. In a report from the Permanent Board on 28 June, it was demonstrated that more than fifty percent of plague cases had come from Taipingshan. Out of 384 houses in Taipingshan, 76 had more than three cases of plague, with 146 having one or two cases.¹²²

4.2 Chinese stringent living conditions

Although Robinson noticed the extremely insanitary conditions of Chinese residents, he failed to point out the social, legal and geographical causalities of Chinese insanitation. As Ho Kai often argued, no Chinese would like to live in an insanitary condition but for the stringent social-geographical conditions in the hilly Hong Kong Island.¹²³ Chinese houses in Canton were spacious and quite different from the type developed in Hong Kong. Osbert Chadwick had noticed the difference between Chinese houses in mainland and Hong Kong as early as 1882.¹²⁴ At that time Chadwick attributed Chinese peculiar type of building as ‘the necessity for economy of space on account of the high price of land and the great cost of preparing level sites for building’.¹²⁵

However owing to the land restrictions imposed upon Chinese, even if Chinese were willing to spend more money for housing, they were not allowed by the colonial building authorities to build spacious houses. In fear of being neighbored with ‘dirty Chinese’, Chinese community was confined within a small space as far as possible from European community in the tiny Hong Kong Island. As will be discussed in the next chapter, which examines issues of space control, this kind of sanitary anxiety promulgated the enactment of segregation laws, viz., the European District Reservation Ordinance No.16 of 1888 and the Hill District No.4 of 1904. Restricted by these laws, Chinese, no matter how rich they were, were not allowed to buy and construct houses in the European reservation areas.¹²⁶ Under

p.390. Within ten years, the two governors’ attitudes towards Chinese sanitary tradition differed remarkably.

¹²² Report from the Permanent Committee under the Sanitary Board, dated 28 June 1894, cited by the Acting Attorney General in the Legislative Council, *HKH*, 27 August 1894.

¹²³ *HKH*, 22 December 1894.

¹²⁴ Osbert Chadwick, ‘Report on the Sanitary Conditions of Hong Kong,’ in *British Parliament Paper*, 1882 [C.3387], pp.49-86, at p.53, paragraph 29.

¹²⁵ Note 124 above.

¹²⁶ In 1904, the Hill District Ordinance was amended and with the permission of the Governor in Council, Chinese could buy land within the Hill district, which was commonly called as ‘the Peak’ (section 4 of the Hill District Reservation Ordinance No.4 of 1904). In 1906, Ho Tung (later Sir Robert Ho Tung, an influential Eurasian merchant, 1861-1956) bought a house on the Peak and his family became the first Chinese family living in European reservation district.

such stringent circumstance, Chinese had no chance but to pack together as tight as possible to cope with the ever increasing population, which made overcrowding worse and worse. Many of the houses in Taipingshan were small, old and dark, with poor plumbing and ventilation. Thus, it must be remembered that overcrowded Taipingshan and other areas in the colony were partly the results of colonial segregation laws and policies.

When the plague broke out, the majority of housing was certified as unfit for human habitation.¹²⁷ Before the plague and despite the fact that he had already resided in Hong Kong for more than two years, the Governor had ‘never received any notice that there was a single insanitary dwelling in Chinatown or elsewhere in the colony’.¹²⁸ Looking back, the Governor himself was ‘at a loss to conceive’ why the public health laws had not been applied. Nonetheless, ‘if blame is to be attached to the Government in the past,’ Robinson declared, ‘I am determined at all events that it shall not be attached to the Government in the future.’¹²⁹

4.3 Proper compensation under the Taipingshan Resumption Ordinance

The government, therefore, prepared a bill which Robinson hoped would ‘render the recurrence of such an epidemic impossible in the future’. A bill with such an important purpose ‘will of course be of a very drastic power’:

It will give the Government power to enter into immediate possession of, and pull down, and destroy, all dwelling-houses and blocks of houses unfit for human habitation. It will provide that the Government shall at once resume the possession of all land on which such dwellings are built, paying, of course, compensation for so doing. It will provide the Government shall have power to enter all houses now insanitary ... The Government will have power to re-survey and rearrange all lots so taken, and open new roads and improve the old ones.¹³⁰

According to Gittins’ memory, (Jean Gittins, Ho Tung’s eighth child who was born in the house on the Peak in 1908), their childhood on the Peak was lonely and not particularly happy owing to the racial discrimination occasionally suffered. When Jean and her siblings were playing with their European neighbours’ kids, ‘on occasion and without any apparent reason, the others might suddenly refuse to play with us because we were Chinese, or they might tell us that we should not be living on the Peak.’ See Chapter 1, ‘A Lone Family on the Peak’, in Jean Gittins, Jean, *Eastern Windows, Western Skies*, Hong Kong: South China Morning Post, 1969, p.15. According to Gittins’ writings, racial discrimination prevailed in colonial Hong Kong until the end of the Second World War. Not coincidentally, the racial segregation public health laws also remained in force until 1946, right after the Second World War. For further information on how the colonial government used urban planning as a means of segregating Chinese from foreigners in early colonial Hong Kong, see Ho Puiyin, *Challenges for an Evolving City: 160 years of Port and Land Development in Hong Kong*, Hong Kong: The Commercial Press, 2004.

¹²⁷ HKH, 27 August 1894.

¹²⁸ HKH, 11 June 1894, pp.47-48.

¹²⁹ HKH, 11 June 1894, p.48.

¹³⁰ Note 129 above.

In a word, the bill would give the colonial government extensive, almost unlimited power to deal with unsanitary housing. The bill would also touch upon the difficult problem of overcrowding:

Power will also be taken to enter and inspect all Chinese houses; such houses will be numbered and classified, and a fixed number of tenants will be allotted to each house and room and owners will be obliged to enter into a covenant that that number shall not, in any case, be exceeded; any infraction of that covenant will of course be followed by heavy penalties.¹³¹

With an ordinance of this sort in force, 'Taipingshan and a great many streets not in Taipingshan would be razed and re-erected on proper sanitary principles'.¹³² Many questions of detail arose surrounding the proposed ordinance. For instance, 'questions of providing those removed from infected districts, questions dealing with the rights of mortgagees and lessees, and questions of awarding compensation'.¹³³ But compared with the greater public good which would be brought about by the ordinance, problems such as relocation and compensation were trivial. For the individuals concerned, of course, these trivialities were of grave importance. As soon as the threat of the plague dissipated, the community's objections would render the enforcement of such drastic measures impossible. 'Strike while the iron is hot': by reciting this hackneyed expression, the Governor encouraged the Attorney-General to quickly prepare the bill and, when the bill was ready, he urged all the legislators to give full and ready support.¹³⁴ Once the ordinance passed the Legislative Council, the Governor telegraphed London for royal assent. On 6 October 1894, the Secretary of State commented the Ordinance was an ill drafted one, but under such an emergency, the Government was rather to accept the Ordinance.¹³⁵ This 'ill drafted' ordinance was then formally approved and came into operation on 15 October 1894.¹³⁶

Fortunately, by the time of the passage of the Taipingshan Ordinance, the plague started to abate. On 12 July 1894, an official announcement concerning the acquirement of the Taipingshan district was issued where landowners of the Taipingshan were reassured that compensation would be properly assessed and granted should their houses be seized.¹³⁷ This announcement effectively calmed local Chinese landowners, who had worried so much about

¹³¹ Note 129 above.

¹³² Note 129 above.

¹³³ Note 129 above.

¹³⁴ *HKH*, 11 June 1894, pp.48-49.

¹³⁵ Telegram, 6 October 1894, CO129/264, p.188.

¹³⁶ Proclamation, *HKGG*, 13 October 1894.

¹³⁷ *HKT*, 12 July 1894.

their properties in Hong Kong and perhaps even have been responsible of disseminating those malicious placards threatening revenges. The colonial government kept its promise and by the year 1899, it had spent \$821,168.32 to buy-up insanitary private property in the Taipingshan district at full market price. The area was laid out afresh with roads, lances, sewers, storm-water drains and other necessary public works at a cost of \$103,128.60.¹³⁸

When the Taipingshan reconstruction scheme began, not only Chinese but some Europeans had worried the resumption would encourage land speculation and fatten the purses of a few at the expense of the many.¹³⁹ In time, it could be seen that these worries were ill-founded. The amount realised by the sale of building lots in Taipingshan up to 1905 was only \$171,391.50.¹⁴⁰ A considerable portion of land made available for building purposes was used for the creation of public gardens or for other public purposes, thus reducing the area intended for sale. This increased the financial loss of the scheme.¹⁴¹

In hindsight, what many Chinese dreaded turned out not to be so bad. If the Chinese had anticipated the good results of these 'drastic sanitary measure', would they have objected so fiercely to the regulatory scheme? But one might also argue that without Chinese fierce protest, the government might not pay full compensation in the case of acquiring insanitary houses. As compensation for housing improvement for the sake of public health was always a sensitive topic the colonial government tried best to avoid. Against the broader historical backdrop, it might be safe to infer that granting full compensation to Hong Kong's Chinese house owners in the Taipingshan district was a strategy deployed by the colonial government to pacify Chinese in the 1894 plague crisis, a necessary cost paying for the imposition of western standard medical and sanitary methods upon Chinese community.

Conclusions

The plague triggered the implementation of new public health laws and incited conflict between the colonial government and members of the Chinese community. From a top-down perspective, Chinese protests against preventative sanitation policies might legitimately be dismissed as obstructive, even pernicious. Looked at from the bottom-up, Chinese recriminations are equally legitimate. Chinese did not share the same medical culture as Europeans and yet they were compelled to follow western-style public health laws. The conflicts between the government and the Chinese community around the plague and

¹³⁸ 'Report on Schemes Undertaken from 1894 to 1905', by W. Chatham, the Director of Public Works Department, in Correspondence regarding Insanitary Properties Resumptions, p.3, in *SP for the year 1906*.

¹³⁹ *HKH*, 3 September 1894.

¹⁴⁰ Note 138 above.

¹⁴¹ Note 138 above.

measures implemented to eradicate it can ultimately be attributed to the different medical cultures and living habits of British and Chinese. With regards to legal transplantation, we might say that social conditions were not ripe for the transplanting of British public health laws. It is regrettable and remarkable that after fifty years of colonial rule, the cultural gap between Chinese and European not only existed but was still quite wide.

The colonial government's reluctance to take responsibility for and improve Chinese living conditions contributed to Chinese alienation around colonial sanitation laws. And that the overcrowded Taipingshan and other areas in the colony were partly the results of colonial segregation laws and policies. As long as Chinese lived separately from European residents, confined to their small quarters, the colonial government was happy to let Chinese in Hong Kong look after themselves according to their own medical and sanitary traditions. Had there not been the plague and its calamitous economic impact, the colonial government would never bother itself to intervene into Chinese sanitation. In this sense, the plague also brought something good to Chinese community. As long as Chinese landowners were reasonably compensated, it seems that members of Hong Kong's Chinese community in general had no serious objection to live in line with western public health principles. But this was at a time of plague. When the plague gradually died out, would the colonists continue to care Chinese poor living conditions? And would the improvement of Chinese houses be properly compensated? These are the main questions to be investigated in the following chapter.

Chapter Five

Space Controls: Building Regulation and Chinese Resistance

The development of Hong Kong's public health laws in the immediate post-plague period presented a busy and noisy scenario. A series of ordinances were introduced with a common object to eliminate the plague as soon as possible. However, despite the best efforts made by the colonial government, the plague kept re-visiting the colony and brought huge losses to Hong Kong's economy. The recurrence of plague enhanced the sanitary syndrome among European colonists. In their governance of colored people, white colonists were often afflicted by a kind of 'sanitation-order anxiety' which attributed the spread of infectious diseases to the filthy and overcrowding dwellings of colonized people. The colonists' imaginary connection between infectious diseases and the colonized filthy presence played as a societal metaphor had exerted powerful influence in the introduction of stringent and oppressive laws controlling the colonized living space.¹ As will be seen in this chapter, Hong Kong's colonial rulers were also afflicted by this sanitary syndrome especially in the time of plague.

This chapter first investigates the influence of the 'sanitary syndrome' upon Hong Kong's public health legislation, particularly the colony's building regulations. It is found that infectious diseases, such as plague and tuberculosis, operated as societal metaphor, and not only justified urban segregation between European and Chinese communities but also supported extremely low compensation schemes under various public health laws. In other words, in the eyes of European colonists, Chinese residences were still major source of infectious diseases and thus deserved strict building regulations. Tapped with strong oriental tunes, the Public Health and Building Ordinance 1903, supposed milestone legislation in Hong Kong's public health history, became a highly controversial and problematic law.

The plague disappeared mysteriously from 1930 onwards. And the official acknowledgment of the failure of western medical science and stringent sanitary measures against the plague to some extent proved the fallacious nature of the sanitary syndrome. The changes in social attitudes and social conditions in the 1920s encouraged more enlightened views of public health regulation. Thus in the last section of this chapter we see the mid-1930s public health reform walking towards professionalisation and humanitarianism.

¹ Maynard W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909', 3 *Journal of African History*, XVIII, 1977, pp.387-410, pp.387-389; Anthony King, *Urbanism, Colonialism, and the World-economy: Cultural and spatial foundations of the world urban system*, London: Routledge, 1989, pp.54-55.

1. Sanitary syndrome and strengthened Chinese regulation

In the effort to eliminate the dreadful bubonic disease as soon as possible, dramatic ordinances continued to be introduced after the 1894 Plague. The Legislative Council introduced another public health ordinance of sweeping powers, viz. the Closed Houses and Insanitary Dwellings Ordinance No.15 of 1894 in the same meeting of the passing of the drastic Taipingshan Resumption Ordinance No.8 of 1894.² Five years later, the Insanitary Property Ordinance No.34 of 1899 was added to the corpus of anti-plague legislation, followed by the Crown Lands Resumption Ordinance No.32 of 1900, and then the Public Health Ordinance No.13 of 1901, as well as the Building Amendment Ordinance No.30 of 1901 and, finally, the Rats Ordinance No.1 of 1902. Indeed, within the eight years between 1894 and 1902, at least 30 items of public health law were enacted or amended, among which the mentioned ordinances were important anti-plague laws.³

With a quick glimpse, we can see that, with the possible exception of the Rats Ordinance No.1 of 1902, these ordinances were more or less about building regulations.⁴ Stringent anti-plague measurements, like the closure of Chinese insanitary houses, domestic visitation and disinfection were still vigorously carried out by the colonial government for a purpose of plague prevention. However, despite all these efforts, the plague kept revisiting of the Colony. The actual recurrence of plague further enhanced Europeans' sanitary syndrome. The scapegoating view taken by Hong Kong's colonial society was that, Chinese 'insanitary' living space and life style continued to be responsible for the plague's recurrence. Through a close examination of the Closed Houses and Insanitary Dwellings Ordinance and the like, this section first investigates the connection between Europeans' enhanced sanitary anxieties and more stringent and drastic legislative controls upon Chinese living space, then to explore how this sanitary syndrome 'justified' an extremely low compensation for private property owners.

1.1 Restrictions upon Chinese living space

The Closed House and Insanitary Dwellings Ordinance was passed in December 1894, a time when the colonial government was still obsessed by the idea that the plague was the

² HKH, 17 September 1894, pp.22-24.

³ For a full list of relevant public health ordinances (1843-1941), please see below Appendix II to this dissertation.

⁴ Well, even this Rats Ordinance was relevant for buildings, since rats like living in buildings. And 'the owner of any premise' was required to 'fill up with cement...all rat-runners and other similar holes in the brickwork, stonework or flooring of any building'. See section 2 (2) of the 'Regulations made under the Rats Ordinance, 1902', in HKGG, 15 March, 1902, p.334.

‘grim offspring of filth and overcrowding’.⁵ Many building restrictions were therefore introduced by the said Ordinance to specifically tackle the problem of overcrowding and filth condition prevalent in Chinese living area. Section 9 of the Ordinance required that each occupant of a house at least had 30 square feet of floor space and 400 cubic feet of air space. Under section 10, an authorised Officer could pay a ‘surprise visit’ to any domestic building at any time to ascertain breaches of the sections against overcrowding. To permit sufficient light and ventilation in the streets, the height of buildings was limited according to the width of the streets in front of buildings (sections 12 and 18).

Of central importance in the Ordinance No.15 of 1894 were the identification and closure of insanitary houses. Upon the certification issued by the Sanitary Board, any houses or any part thereof deemed unsuitable for inhabitation could be shut up or closed by the Board (s.16). Hundreds of houses listed in the two Schedules attached to the Closed House Ordinance were wholly or partially closed (s.2, First Schedule and Second Schedule). Until the sanitary conditions of the houses in these two schedules were improved to the satisfaction of the same Board, no one could re-open or re-occupy such buildings (s.15).

To ensure effective implementation of the said Ordinance, power of the Sanitary Board was greatly increased as compared with the situation under the Public Health Ordinance, 1887. Section 13 of the empowered the Sanitary Board to make, vary and repeal bye-laws on a large variety of matters including the entry and inspection of all buildings and curtilages; fixing the number of persons occupying a domestic building; proscribing the materials used for house construction, particularly for those covering ground floor, latrines and drainages. Bye-laws could also be made by the Board to prevent or mitigate any epidemic, endemic or contagious disease, including some drastic measures of compulsory vacating of houses. In any such bye-laws, the Sanitary Board could impose penalties for any breach thereof not exceeding \$25. In pursuing a quick enforcement, the Ordinance No.15 of 1894 went even further. Section 16 prohibited any suit to be laid against the Sanitary Board or any person acting under the authority of the Sanitary Board.⁶ While the Sanitary Board was protected by the law against any possible suits, the people on the other side was

⁵ *HKH*, 22 December 1894, p.22.

⁶ Section 16 of the Ordinance No.15 of 1894 was a lengthy clause, but deserves a full citation due to its sweeping and drastic nature,

‘No suit or action shall be commenced or lie, or, if commenced, be continued against the Sanitary Board or its officers or the Permanent Committee thereof or any person acting under the authority of the Sanitary Board or the Permanent Committee for any loss or damage incurred by or resulting to any person by reason—

(a) Of the removal of the occupants of any house mentioned in the 1st and 2nd schedules hereto.

(b) Of the shutting up or closing of any such house or any part thereof.

deprived their right of seeking judicial redress. Suppose an Officer acting under the authority of the Sanitary Board made mistakes, according to section 16, no one could bring an action against such mistakes. Besides, under section 16, the owner of the houses could not resort to courts for any compensation for the lost or damage during the closure period.

The very poor protection of the private house owners under the Closed Houses and Insanitary Dwellings Ordinance stood in stark contrast to the Taipingshan Resumption Ordinance. Under the Taipingshan Resumption Ordinance No.8 of 1894, ‘full and fair compensation’ was granted to the owners of the insanitary houses which were resumed by the government on the date of 1 June 1894 (s.5 (1) of the Ordinance No. 8 of 1894). All the compensation awarded also bore interest at the rate of 7 percent from 1 June 1894 until payment was made (s.23). Furthermore, a Board of Arbitration was set up under the Taipingshan Resumption Ordinance in order to deal with individual complaints or disputes as regards any damages or loss resulting from the official closing or resumption actions (s.5 (2)).

1.2 Un-officials’ objections against building restrictions

Every restriction imposed upon buildings would mean a possible sacrifice of private property interests, the un-official members, who presumably represented the general society but not uncommonly fought for the interests of specific groups, were very sensitive on the boundary set up between private rights and public health under the Closed Houses and Insanitary Dwellings Ordinance.

Among the many disputable clauses, section 16 of the prohibition of laying suits against the Sanitary Board might be the mostly contentious one during the deliberation process. The unofficial members of Hong Kong’s Legislative Council almost unanimously objected to this ‘unreasonable and injustice’ legislation of section 16.⁷ But the colonial government of Hong Kong defended this clause on the ground that ‘great powers have to be

(c) Of the destruction or removal of, or of the damage to any buildings, wells, furniture, fittings, mezzanine floors, cock lofts, partitions or articles in any such house or curtilage closed or disinfected by orders of the Sanitary Board, provided such destruction, removal or damage occurred during the prevalence of the Bubonic Plague or during any operations which were necessary or deemed necessary by the Board for the cleansing and disinfecting of any such houses, or,

(d) Of any loss of rent whatever in respect of any such house, or

(e) Of the continued possession of any such house and curtilage or any part thereof by the Sanitary Board or the Permanent Committee thereof pending the carrying out of the provisions of this Ordinance in respect thereof.’

⁷ Hong Kong’s Legislative Council was composed of official members and unofficial members. In 1850, the first unofficial members were nominated to Hong Kong’s Legislative Council elected by the unofficial Justices of Peace. The Legislative Council of 1894 had 11 members: 6 official members including the Governor and 5 unofficial members including the Hon. Ho Kai.

given in a great crisis.’ The Attorney-General even cited the case of Governor Eyre to support this indemnification of the Sanitary Board.⁸ In explaining why no compensation was granted, the colonial government resorted to an old maxim in Roman law – *sic utere tuo ut alienum non laedas* – that is, when a person uses her or his property improperly, the state has a right to stop her or him from being a danger to the community.⁹ But this Roman law maxim could not justify the contrasting treatment of private house owners under the Taipingshan Resumption Ordinance and the Closed Houses and Insanitary Dwellings Ordinance. If ‘full and fair compensation’ was granted for the resumption of those ‘extremely filthy’ houses in Taipingshan district, the un-officials argued, the lost and damages occurred to other insanitary houses during the temporary closure should at least be compensated in partial, if not fully.¹⁰ Despite un-officials’ unanimously objection, owing to the numerical prominence of official members, section 16 was narrowly passed at a 6:4, with 1 abstaining vote of Ho Kai.¹¹

Another highly contentious clause was section 12 of the height limitation. The hon. E. R. Belilios suggested deleting section 12 altogether on the ground that such restriction would retard and prevent the progress of the Colony of Hong Kong. Belilios’ observation was indeed of merits. As in many big cities like the New York, Venice, there were high buildings of 12 or 14 floors alongside narrow streets without serious health problems. But the Director of Public Works insisted that the peculiar situation in Hong Kong required stricter restrictions. And in Britain, such a sanitary restriction upon the height of buildings alongside streets did exist, for instance bye-laws issued by London and Birmingham city councils.¹² When Belilios’ amendment was lost, the Hon. E. R. Charter moved a second amendment to the proposed section 12. Charter pointed to a specific area between Queens’ Road and the Praya on Hong Kong Island that was a new residential area mainly invested in and developed by European companies. Charter pointed out that under section 12, many houses in that new

⁸ As Governor of Jamaica in the 1860s, Edward John Eyre had suppressed a local rebellion by instituting a month-long reign of terror. A thousand houses were burned, 493 black persons were executed and still more were flogged and tortured. Eyre was defended at home in London on the ground that in Jamaica in protecting the white élite, drastic powers and measures had to be adopted decisively, and that British subjects across the empire were not all the same, so that black people could not expect the same rights as white persons under English laws. In the case *Phillips v Eyre*, 1870, LR 6 QB 1, the Court laid down an important precedent in the conflicts of laws on Tort. For more details of Eyre’s case in influencing British colonial rule in its racial policies and legislation, see Geoffrey Dutton, *The hero as murderer: the life of Edward John Eyre, Australian explorer and Governor of Jamaica 1815-1901*, Sydney: Collins, 1967.

⁹ HKH, 22 December 1894, p.22.

¹⁰ HKH, 22 December 1894, pp.30-31.

¹¹ HKH, 22 December 1894, p.31.

¹² HKH, 22 December 1894, p.28; 24 December 1894, p.24.

area would have to be re-constructed at a huge financial cost. Moreover, that area was occupied by well off residents and the problem of overcrowding was almost non-existent. Charter therefore suggested relaxing the height limitation from 35 feet to 46 feet. This time, this amendment was accepted.

Except for those buildings which belonged to the colonial government and Naval or Military departments (s.20), in theory, the provisions of the Closed House Ordinance were applied to all the buildings in colonial Hong Kong, as no distinction was made between Chinese and European houses in the ordinance. But, in practice, it was mainly Chinese houses that were put under strict supervision. For example, the majority of closed insanitary houses under the Two Schedules were owned by Chinese. And the 'surprise visits' paid by the sanitary inspectors also took place only in Chinese dwellings. The colonial government did not deny this practically racial distinction under the implementation process of the Closed House Ordinance. Indeed, the Attorney-General openly supported these restrictions upon Chinese houses by saying that, 'It is our policy to encourage Chinese to come here ... [if they did not change their dirty habits and preferred to be in insanitary places [...we part you with sorrow, but go to another land...].¹³ Like many other arrogant European colonists, the Attorney-General believed that insanitation was an intrinsic character of Chinese subjects rather than a product of poverty and social inequality.

The Hon. Ho Kai fought hard for fairer public health legislation for the Chinese community in Hong Kong, 'if the Colony was to gain...let the Colony pay for the cost...' But his arguments were not very much different from the ones he presented in protesting the Bill of Public Health Ordinance, 1887.¹⁴ If in the 1880s, the colonial government might have lent some sympathy to Ho Kai's standpoint, now in the year of 1894, with a firm belief that the Plague was 'offspring of filth and overcrowding', the colonial government would make no compromise. In facing the government's indifferent attitudes, Ho Kai warned the colonial government that,

[T]he Chinese if you understand them can be led very easily, and if you were to do a certain thing according to their notion of the fitness of things they would obey and be led by you like so many lambs; but if you are to pass laws to interfere too much with their domestic peace ...to handle them roughly and with a high hand, they will resent it, not in any very quarrelsome way ...but quietly leave the colony, and will leave us, in fact, like Robinson Crusoe on the desert island...'.¹⁵

¹³ HKH, 22 December 1894, p.22.

¹⁴ HKH, 22 December 1894, pp.24-25, 27-28. For a detailed account of Ho Kai's rationale for the objection against the said Public Health Bill of 1887, please see *Dr. Ho Kai's Protest against the Public Health Bill*, dated on the 2nd December 1886, in *Sessional Papers* no. 30 of 1887.

¹⁵ HKH, 22 December 1894, pp.24-25.

Unfortunately, Ho Kai's predictor came to true several years later.

Despite the colonial government's best efforts, the plague kept revisiting the Colony of Hong Kong. The year of 1901 turned out to be the most serious year since the 1894 Plague. From 11 May till early July 1901, twenty-five European had been inflicted and nine had died. The Colony was alarmed by the prevalence of plague, developed a sense of panic. Concerns of the safety of European community arose in the Colonial Office in London. Instructed by the Home Government in London, the colonial government of Hong Kong launched strict control of Chinese movements.¹⁶ Chinese patients suspecting of suffering plague were once again refused by colonial government to be moved to Canton. The colony's Chinese community, especially the coolie classes, was in a state of panic as was the case of 1894. Too much sanitation and too many restrictions, the Chinese residents of Hong Kong could bear no more. As forewarned by Ho Kai several years earlier, an exodus of the Chinese community started from May 1901. The departure of Chinese labourers in significant numbers paralysed work in the Colony and caused much inconvenience and significant losses.

The recurrence of plague indeed had severe impact to Hong Kong's economy. The European community, especially its mercantile section, became increasingly impatient with government anti-plague measures. Criticisms against the colonial government mounted. Led by the Hong Kong General Chamber of Commerce, the European merchants urged the colonial government for an immediate and thorough implementation of the recommendations put forward by Osbert Chadwick in 1882, including the cleansing of drains and houses, and the improvements of slums.¹⁷ These measures, especially the reconstruction of houses required huge amount of money. As the Governor pointed out 'it must be remembered that

¹⁶ Till 1900, a regulation was in force in Hong Kong by which Chinese plague patients might at their own expense and with certain precautions be transported to any part of China beyond 40 miles of Hong Kong. Later, the Colonial Office gave instructions to rescind this regulation on the ground that it was immoral infection to be spread in this way. See 'Minutes to the Telegraph from Governor to Secretary of State', dated 14 June 1901, CO129/305, pp.367-368. But in the early 1900s, Chinese residents in Hong Kong did not share the same medical knowledge as European counterparts. In addition, the majority of Chinese residents, especially lower classes Chinese still preferred traditional Chinese medical treatment which the colonial government was unable to afford. The differences between Chinese and western medical systems contributed much to Chinese resistance to the western style public health laws.

¹⁷ Osbert Chadwick, a renowned British engineer experienced in sanitary matters and the son of British sanitary reformer Sir Edwin Chadwick, first came to Hong Kong in 1882 to access the sanitary conditions of the colony and propose improvements. It was mainly based Chadwick's 1882 report on Hong Kong's sanitation that Hong Kong's first Public Health Ordinance, 1887 was drafted. Chadwick's second visit to Hong Kong was in 1889 to complete the then unfinished water-supply system. In 1902, due to the recurrence of the plague, Chadwick was invited by the then Governor Blake to serve as a Legislative Councilor in Hong Kong.

we shall be dealing with property worth from £ 100,000 to £ 150,000 per acre.¹⁸ The colonial government of Hong Kong did not feel competent to deal with so large a question without first obtaining the advice of an eminent Sanitarian. As a last resort, the European community petitioned to the British Government in London asking for a thorough review of Hong Kong's sanitation by an expert of eminence.¹⁹

2. Expertise' participation of legislation

It was against the above backdrop that Osbert Chadwick was for the third time dispatched by the Colonial Office to Hong Kong. This time, he had one more companion – Professor Simpson, who was specialised in 'medical science'. The concurrent appointment of a medical professional other than the civil engineer to some extent reflected the general trend of public health development in the new century. At the turn of the twentieth century, the British Authorities in London began to accept that plague was better to be dealt with by medical experts rather than experts in civil engineering. But the colonists in Hong Kong still clung to the old philosophy and firmly believed that the improvement of environmental sanitation was the best way for plague prevention. As will be seen in this Section, despite Simpson's participation, Chadwick's opinions dominated in this 1902-03 public health reform.

2.1 Medical and sanitary investigations

As a medical man, Simpson focused on the epidemiological and etiological dimension of plague. Thus, in his first memorandum, Simpson pointed out that 'Plague is, in fact, a disease among rats, the infection of which can be conveyed to human beings'.²⁰ Therefore rat elimination was suggested as being of paramount importance among all the various possible anti-plague measures. Simpson's recommendation on rat destruction was soon absorbed into Hong Kong's public health law. The Rat Ordinance No.1 of 1902 was passed in an emergency manner with the suspension of the Legislative Council's standing orders.²¹ Bacteriologists were employed to examine rats daily. In order to encourage Chinese to catch

¹⁸ 'Despatch no.244 from Governor Blake to Secretary of State Chamberlain', 5 July 1901, CO129/305, p.471; also see 'Correspondence regarding the Sanitary Conditions of Hong Kong' (hereafter CSCHK), in *SP of 1901*, p.8.

¹⁹ 'Petition to the Secretary of State, 25 June 1901', enclosed in Despatch no.254, CO129/305, pp.659-668; CSCHK, pp.22-38.

²⁰ W. J. Simpson, 'Preliminary Memoranda on Plague Prevention in Hong Kong', in *SP, no.15 of 1902*, p.1.

²¹ *HKH*, 27th Feb 1902, pp.4-5.

rats, a small bonus of five cents was granted for every rat caught, live or dead.²²

Simpson also believed that filthy and overcrowding environment would encourage outbreaks of the plague.²³ Thus in his second memorandum, Simpson paid more attention to the social conditions and circumstances which favoured the annual recurrence of the plague. One peculiar condition in Hong Kong came into Simpson's eyesight, namely, a much larger proportion of insanitary laboring class squashed in a much smaller space than any other Eastern cities he had seen. Simpson recommended some practical ways to alleviate Chinese overcrowding in Hong Kong. For instance, by utilising the more abundant land of Kowloon and the New Territories, finishing the reclamation schemes in the Island and developing cheap public transportation, it was hoped that the population in crowded areas would be spread out.²⁴ What Simpson recommended here was indeed town planning and urbanising schemes. But these urbanisation projects were expensive and were too long term to have significant immediate effect. In addition, some projects designed to spread out population were, it turned out, likely to worsen the situation. For instance, when the cheap tramway was completed in 1904, instead of distributing laboring class to the outlying areas of Hong Kong, more people were attracted to the center of the city as a result of the affordable cheap transportation available there. Compared with those long term and costly projects, the most convenient and economic way for the government to abate overcrowding was to require private property owners to improve the house design and structure at their own cost. Like many other medical professionals, Simpson also urged the imposition of stricter building regulations.²⁵ The topic of compensation was however ignored by this medical Professor.

In his second memorandum, Simpson also highlighted the poor communication between the colonial government and local society in Hong Kong. The possible results of poor communication was Chinese misunderstanding of colonial government's benign intentions,

The vast majority of the population was ignorant of the wishes of the colonial

²² Local Chinese community was soon mobilized and co-operated well with the colonial government in the action of catching rats. But one interesting thing happened, the colonial government soon identified that some Chinese started to import large amount from Canton to Hong Kong to get the bonus for making profits!

²³ Although Simpson observed that the plague was a disease among rats, he did not find evidence to support this allegation. So apart from rat, Simpson also suspected the filthy environment as a cause for the plague. It was not until 1905-1906 that an infected rat flea was confirmed and widely accepted as the disease vector. For details of the causality of the plague, see note 10 of Chapter 4.

²⁴ Simpson, 1902, p.7. But the land in the New Territories was not available for the colonial government till the year 1898, when the Convention for an Extension of Hong Kong Territory between China and Great Britain was signed.

²⁵ Simpson, 1902, pp. 7, 14-15.

government and of its benign intentions in the matter of plague prevention. Instead of viewing any regulations which they may hereof as intended for their benefit, Chinese treat these regulations with the greatest suspicion and alarm and as just objects for evasion.²⁶

Several suggestions were made for the purpose of improving communication. For instance, to distribute handbills explaining causes and symptoms of plague and measures to be taken on its appearance; to hold conference of Chinese style doctors and explain to them government's anti-plague measures; and to inform contractors of labour and heads of guilds of the government's good wishes. Except for the distribution of handbills, the colonial government of Hong Kong thought all the other methods were useless, and even if done, 'little good beyond the mere publication could be hoped for'.²⁷ Perhaps the colonial government thought itself knew better the Chinese community of Hong Kong than Professor Simpson did. After all, for the then colonial government, the Chinese residents of Hong Kong were subjects to be regulated rather than to be explained to or consulted.

Based on his own investigation from a civil engineer's point of view, Chadwick also submitted two reports.²⁸ The main difficulties of Hong Kong's sanitation, in Chadwick's opinion, were still the filthy and overcrowded Chinese houses. To his disappointment during this third visitation to Hong Kong, Chadwick observed that 'as regards overcrowding, the present conditions of Victoria are, generally, rather worse than better, than they were in 1882. The filthy conditions of Chinese dwellings rendered all other sanitary measures invalid, 'the water-supply, sewerage, drainage, scavenging – all may be perfect, but there will be no complete security, so long as dwellings are over-crowded and filthy'.²⁹

Chadwick was of the opinion that the landowners' 'greediness' accounted for the inefficiency of previous building regulations.

'Naturally, the landowner desires to get the best rental for his land, by crowding as many tenants as possible. Consequently, during the past twenty years, numerous Building Ordinances...have been brought before the Legislative Council, but in each case, many salutary provisions have been withdrawn or emasculated at the request of the unofficial Members of Council, representing the landed interest.'³⁰

Although Chadwick also noticed that 'the Government in short have to face the problem, which is still awaiting complete solution elsewhere; namely the housing of the

²⁶ Simpson, 1902, p.11.

²⁷ 'Alphabetical Reference Table to Professor Simpson's Recommendations', in *SP for the year 1902*, p.666.

²⁸ Osbert's two reports are the 'Preliminary Report on the Sanitary Condition of Hongkong', in *SP for the year 1902* (hereinafter cited as Chadwick, 1902a) and the 'Sewerage and drainage of Hongkong' in *SP for the year of 1902* (hereinafter cited as Chadwick, 1902b)

²⁹ Chadwick, 1902a, p.34.

³⁰ Note above.

working classes,' he did not think it would be advisable to for the government to buy up insanitary properties and replace them with proper dwellings at a remunerative price.³¹ It seems that two decades after his first sanitary report on Hong Kong, Chadwick still followed the old logic of the colonial government on the subject of compensation: let private house owners pay the cost for building improvement.

On 14 May 1902, Simpson and Chadwick presented a Conjoint Report on the Question of the Housing of the Population of Hong Kong.³² It seemed that after their respective investigation, the two experts had reached a meeting of minds to the effect that the housing of the population was the core issue for Hong Kong's public health improvement. However, on a close study of the conjoint report, it is found that instead of addressing how to accommodate working class Chinese in an enlarged living space, the two experts echoed and elaborated the old question of how to improve sanitation of Chinese houses.³³ Indeed, this conjoint report might be better interpreted as a quasi-legislative document supporting the introduction of stringent and drastic building restrictions for the sake of public health.

According to the two experts' investigation, the insanitary conditions of Hong Kong were largely owing to the following three causalities: first by crowding together of too many houses in a too small space; secondly, by insanitary defects in the design of Chinese dwelling houses; and thirdly, by crowding too many inmates in these houses.³⁴ In short, Hong Kong's sanitary problems were caused by Chinese residents' overcrowding and their filthy houses. Like all the previous sanitary investigations and reports,³⁵ this conjoint report also failed to point out that segregation laws and policies had significantly contributed to Chinese overcrowding condition.

As mentioned briefly in the Introduction Chapter, the best areas in Hong Kong had been reserved for European community under various laws, for examples, the European

³¹ Note above.

³² Osbert Chadwick & W. J. Simpson, 'Report on the Question of the Housing of the Population of Hongkong [with the Public Health and Buildings Bill]', in *SP for the year 1902*

³³ The colony of Hong Kong had to wait another two decades for the government to formally investigate the housing problems from labouring classes' perspective. In 1923, a Housing Commission was appointed by the Governor to enquire 'as to what measures are possible to increase the quantity and decrease the cost of housing accommodation in the Colony'. 'The Report of the Housing Commission', dated 26 September 1923 will be discussed in some detail in Section 4. Here it is suffice to mention the key issue of housing working classes was not the main content of this Conjoint Report, despite its title is on 'housing population'.

³⁴ Chadwick & Simpson, 1902.

³⁵ For instances, Chadwick's 'Report on the Sanitary Conditions of Hong Kong', in *British Parliament Paper*, 1882 [C.3387], and the 'Report of the Commission appointed by His Excellency Sir William Robinson to inquire into the existence of Insanitary Properties in the Colony', in *SP for the year 1898*.

District Reservation Ordinance No.16 of 1888 and the Hill District Ordinance No.4 of 1904. Land transaction restrictions were applied in the real estate market. Chinese, no matter how rich they were, were not allowed to buy land or houses in the European reservation areas.³⁶ Under such stringent circumstances, the Chinese residents of Hong Kong had no choice but to pack together as tightly as possible to cope with the ever increasing population, which made overcrowding worse and worse. Because European residents in Hong Kong were in fear of being neighbored with ‘dirty Chinese’, so the Chinese community was confined within a small space as far away as possible from the European community on the relatively small Hong Kong Island. Any attempt to relax restrictions upon space segregation between the European and Chinese community would incite great anxiety and panic among European colonists.³⁷ Had there not been the plague and its calamitous economic impact, the colonial government would probably never have bothered itself to intervene into Chinese sanitation.

2.2 The draft Public Health and Buildings Bill

To mitigate the colonists’ increased sanitary anxieties, a draft Bill, viz. the Public Health and Buildings Bill (hereafter the PHBB), was also prepared by the experts.³⁸ And in order to avoid the need to introduce further sanitary legislation in the next few years, the framers decided to consolidate all of the Sanitary and Building Ordinances into one single Bill. With such an ambitious object, the proposed Public Health and Buildings Ordinance was lengthy, complicated, and also controversial.³⁹ But instead of relaxing the segregation regulations and spreading of Chinese population and housing of the poorer working classes,

³⁶ In 1904, the Hill District was amended and the first Chinese to buy house in the Hill District was Ho Tung. According to his daughters memoriam, their life in the Peak was not particular happy, as being hostile and prejudiced by while Europeans. In 1919, another racial segregation ordinance was passed regardless of Chinese un-official members’ strong protests, viz. the Cheung Chau (Residence) Ordinance No.14 of 1919.

³⁷ For instance, the quarrelsome situation under the rule of Governor Hennessy when he tried to relax the land transaction restrictions upon Chinese in the early 1880s.

³⁸ The original draft Bill was prepared by Chadwick, Simpson and Dr. Francis Clark, the then Medical Officer of Health in Hong Kong.

³⁹ The Bill contained 274 provisions arranged under six parts. Part I was Preliminary, dealing mainly with definitions. Part II dealt with public health administration, including the constitution and general power of the Sanitary Board. Part III was related with building construction. Running from section 97 to section 232, this part constituted the major part of the proposed ordinance and was also the focus of controversy. Part IV concerned the rights of adjoining owners. Part V concerned the procedures for property acquisition by the Crown for sanitary reasons; Part VI covered penalties and contraventions. In addition to the 274 provisions, the proposed ordinance also contained eight Schedules (A to G). Schedules B to D collected a variety of sanitary byelaws and regulations which ‘shall be deemed to have been duly issued by the Sanitary Board, approved by the Legislative Council’ or ‘duly issued by the Governor in Council’ and ‘shall remain in force until altered, amended or revoked’ (s.2(2)-(3) of the draft Bill).

the framers determined to introduce even more stringent building regulations. The rigorous and often drastic building provisions which had been emasculated or failed to be enacted in the 1880s and 1890s, now were not only to be re-enacted but also now to be introduced in a tougher and more drastic version.⁴⁰ Meanwhile, the framers did not forget to ensure spacious living space for Europeans by separating the two communities between Chinese and Europeans. Part III of the Bill incorporated the European Reservation Ordinance No.16 of 1888 and the Hill District Ordinance No.26 of 1888 with certain modifications.⁴¹ Thus, under the new ordinance, Chinese and European communities were still to live apart. The law continued to promote segregation so as protect European colonists from being neighbored with 'dirty' and 'infectious' Chinese.

Limited by space and time, this study will not go into the details of every contentious provision in the new ordinance. But two topics could not be missed out if we want to know better the subsequent controversies around the first draft Bill, namely, the new legal definition of 'overcrowding' and the compensation scheme under the draft Bill.

Stricter definition of 'overcrowding'

So as to abate overcrowding, the two experts suggested 'it is necessary not only to limit the number of houses to be built on a given area, but also to limit the number of people that shall occupy a room'.⁴² In the opinion of experts, the then minimum living space per person under section 75 of the Public Health Ordinance No.13 of 1901 was too low to ensure a healthy living environment.⁴³ Thus, section 48 of the draft Bill introduced a higher standard definition of overcrowding to ensure every person would have a living space no less than '50 square feet of floor space' and '600 cubic feet of clear internal air space'. Under the new definition of overcrowding, the number of cubicles in dwelling houses was accordingly

⁴⁰ For instances, section 48 of the draft Bill strengthened the concept of overcrowding; section 171 enlarged the space needed between a house and the hill near which it was built; sections 147 and 148 rendered the construction of cubicles more difficult; sections 174-177 required more open spaces around buildings; section 186 laid down stricter limitations on buildings' height (s.186), and section 147 limited the depth of living rooms in certain buildings. Owing to the drastic nature of these building provisions, even the Attorney-General admitted that these newly introduced building provisions 'are likely to be contentious' in initiating the first reading of the Bill, in *HKH*, 7 July 1902, p.34.

⁴¹ In order to give a little more space to Chinese community, section 6 (2) of the Bill redefined the boundary of European Reservation District and made it a little bit smaller than before. This slight modification, as will be seen shortly, attracted strong protest from European community.

⁴² Chadwick & Simpson, 1902, p.11.

⁴³ Under section 75 of Ordinance No. 13 of 1901, 'every domestic building found to be inhabited in excess of a proportion of one adult for every *thirty square feet* of habitable floor space ... and *four hundred cubic feet* of clear and unobstructed internal air space shall be deemed to be in an overcrowding condition' (emphasis added).

reduced. Sections 148 and 149 in the original draft Bill prescribed that no cubicle room could be constructed in any storey unless provided with a due site window or a skylight. Under Hong Kong's peculiar geographical and social conditions, sections 148 and 149 virtually abolished cubicles.

In order to 'limit the number of houses on a given area', the provisions relating open space were also dramatically amended. For instance, under section 56 of the Public Health Ordinance No.13 of 1901, when a lane of certain width was provided to the newly built house, the requirement of providing open space could be exempted. Thus in reality, many houses abutting lanes and streets calculated those streets and lanes as open space instead of providing back-yard space. It was observed by the two experts that in many inland lots, if the private lanes and streets were deducted, the back-yard open space was often less than 2-3% of the total area.⁴⁴ Thus section 174 of the PHBB prescribed that in the case of new houses erected on land obtained from the Crown after the commencement of the Ordinance, open space shall be 'exclusively belonging to such building, equal in area to not less than one-half of the roofed over area of such building'.⁴⁵ Section 176 further required that the width of such space should not be less than two-thirds of the height of the said building.⁴⁶

Apparently, if the above provisions on prevention of overcrowding came into law, the accommodation capacity of Chinese houses would be considerably shrunk. For instance, if a Chinese house legally accommodating fifteen persons under the Ordinance No.13 of 1901 might have to be reconstructed to accommodate no more than 10 tenants in order to avoid breaching the new Public Health and Buildings Ordinance. More open space and fewer domestic tenants, this might be good for public health, but was not so good from an economic point of view. House reconstruction demanded lots of money. One possible result of such costly reconstruction was, however, reduced rental income. Unless they were properly compensated, house owners would be unlikely to welcome these regulations merely for the sake of public health. Yet, no compensation was provided for in the proposed Ordinance.

Not all European residents in colonial Hong Kong agreed with such a strict definition of overcrowding. From their professional experience, some local architects asserted that in a well-designed Chinese houses it was possible to allocate as little as 300 cubic feet per head

⁴⁴ Chadwick & Simpson, 1902, pp. 4-5.

⁴⁵ In the case of buildings on land already sold by the Crown before the commencement of the said Ordinance, the provision of open space should be not less than 'one-third of roofed area' (s.175 of the first draft PHBB).

⁴⁶ In the case of buildings erected before the enactment of the said Ordinance, the width of open space shall be not less than 'one-half of the height of the said domestic building' (s.177 of the first draft PHBB).

without offending the legal definition of overcrowding. For example, Mr. Danby, an established architect who had worked in Hong Kong for many years and who had designed new types of Chinese houses which demonstrated that even allowing each individual only 21 square feet and 300 cubic air feet was still possible to achieve sanitation and healthy living condition.⁴⁷

Although Chadwick and Simpson appreciated Danby's admirable endeavors in developing new type buildings for the poorer Chinese residents of Hong Kong, they could not agree that a house contained such a large number of occupants as recommended by Danby would in reality still remain in a sanitary condition.⁴⁸ If Danby's suggestion had been incorporated into the law, the conflict between sanitary requirements and housing problems could have been greatly mitigated in the following decades in colonial Hong Kong. Unfortunately, driven by the enhanced sanitary anxieties, the more practical approach to defining 'overcrowding' was refused by the colony's public health experts, whose opinions

⁴⁷ On 10 July 1894, Danby sent a letter to Chairman of Committee appointed by Governor Robeson to investigate the question of Housing of the Chinese shortly after the break out of the Plague. In that letter, Danby introduced the merits of this new type of house. As far as he knew, almost all the Chinese property owners who had been persuaded by the architects to adopt new design later expressed their satisfaction and believed that such a type of building would eventually become popular with the 'working' and 'coolie' classes in Hong Kong. However, under the existing building and public health ordinances, the local architects felt powerless to introduce such improvements in a wider scale. Danby also highlighted the fallacious points in the medical approach of overcrowding definition. For example, some medical professionals in Hong Kong often advocated the British sanitary standard of 1,000 persons per acre. This statement in the architects' opinion was misleading, and did not explain how the figure was arrived at. Was the acre mentioned referring to the net actual area covered by buildings only, or did it include streets, gardens, yards and so on? Danby further pointed out that the number of persons accommodated by the suggested new buildings in a 3 storied building only, would result in a population density of only 2,136 adults per acre. And Danby was confident that no medical men could by any possible means call that condition as 'overcrowding'. In conclusion, Danby, representing local architects, hoped that newly appointed Housing Committee could change the legal definition of overcrowding and promulgate this new type of building among lower classes of Chinese residents in Hong Kong. Owing to the importance of his communication with that Housing Committee and his rich local experience, Danby's letter on 10 July 1894 was selected by Chadwick and Simpson as an appendix to their conjoint report. Danby's letter reflected local architects' opinions on the problem of housing Chinese in the later nineteenth century and early twentieth century, which were not identical with the sanitary and medical experts' opinions, but rather were more practical and closer to Hong Kong's social realities. It will be interesting to see how the then colonial government reacted to local architects' opinions, for what reasons local architects' suggestions were rejected. However, this study has searched in vain for the most relevant documents: two reports submitted by the Committee re Housing of the Chinese dated 28 July 1894 and 13 August 1894 respectively. These two reports might be the first formal documents openly addressed on the question of housing Chinese by the colonial government. It is a pity that this study cannot locate the two reports. Nevertheless, from subsequent events, we can to some extent conjecture that local architects' suggestions had not been accepted by the government. As we have seen in Section 4.1, building regulations in the post-1894 plague period indeed became much stricter than before.

⁴⁸ Chadwick & Simpson, 1902, paragraph 24.

at this stage dominated public health legislation.

Low compensation mechanism

As mentioned above, the proposed Ordinance took an almost niggardly approach on compensation. Only in the case of acquisition of buildings, if certain conditions were met, would full (or in many cases a reduced) market price be the basis of compensation to landowners.⁴⁹ In the case of house re-construction or re-erection, no compensation was proposed to be offered by the draft Bill. Beside, under section 251 of the draft Bill, suits were not allowed to lie against the government or officials for any loss or damage resulting from the action of house seizure. In other words, the proposed PHBB removed the judicial protection of private property rights and put the land owners in a very weak legal position. According to the framers, such a strict compensation scheme was modeled on the Imperial Public Health Act, 1875 and the Housing of the Working Classes Act, 1890.⁵⁰ But on a close examination of the compensation principles under relevant English laws and the two experts' sanitary reports, this study argues that European colonists' deep-seated prejudice against 'filthy and overcrowding' Chinese houses was the real motivation for such a low compensation scheme.

The recurrence of plague pushed Hong Kong society, especially the European mercantile section increasingly blame the 'insanitary presence' of Chinese community and the inefficiency of colonial government in dealing with public health problems. As one of the framers analysed the matter,

Since the outbreak of plague, the mercantile section of the community have realised that their interests are not quite independent of the health of the Chinese population.... [However]...the commercial and land-owning interests are opposed. The former desire freedom from epidemic The latter, the majority of whom are Chinese and not British subjects, desire to get the greatest possible rents Which is to yield, the European who founded the Colony, or the Chinese who comes to it for his own purpose? ⁵¹

For Chadwick, the answer to his last question seemed to be self-evident. However, in leading to this question, Chadwick made three mistakes. First, land property's interests and commercial interests were not necessarily incompatible. When a port is always being declared infectious and quarantine in place, the real estate market in that port would also be

⁴⁹ Among the conditions, for instance, were that if the premises were deemed unfit for human habitation, only the value of the land and the materials of the buildings would be considered by the Board of Arbitration in deciding the number of compensation, while the rateable value and the net rental of the said premises would not be compensated (section 254 of the original draft of the PHBB).

⁵⁰ Chadwick & Simpson, 1902, pp.11-12.

⁵¹ Chadwick, 1902a, p.34.

adversely influenced. Secondly, although the majority of landowners in Hong Kong were Chinese, this did not mean that the minority European landowners could be overlooked. Actually many of the principal edifices in Hong Kong were under European ownership, for instances, the buildings of the Hongkong Club, the Hongkong and Shanghai Bank, and the Chartered Bank. By establishing such a low compensation scheme, the Bill also risked in offending European landowners property interests. Thirdly, both Chinese and Europeans in colonial Hong Kong were British subjects, who according to the Letters Patent shared equal legal rights. It was strange from legal point of view that Chadwick would describe Chinese residents in Hong Kong as non-British subjects. But this comment exactly reflected Europeans' strong feeling of superiority over Chinese subjects.

Looking back, it seems clear that the proposed Public Health and Buildings Ordinance was another item of Eurocentric legislation to be added to the body of Hong Kong's public health laws. But for the men on the spot, it was not easy for these framers to realise the limitation of their own class and social status background. As we have seen, the experts and framers sincerely believed what they objected to would, if dealt with properly, also benefit Chinese community. Whether the means of carrying out the reforms were fair or proper for the Chinese subjects was a question beyond the legislators' concern. As the Attorney-General commented one year later, that this Bill 'perfectly in accord at that time with the requests and wishes of the [European] Petitioners'.⁵² In concluding their conjoint report, the framers predicted optimistically,

'If the Government can secure its adoption by the Legislative Council with only such alterations as the Attorney General may deem necessary, the Colony will possess an Ordinance which will gradually secure a great improvement in its general sanitary condition, and will lead to the suppression of those diseases which are dependent upon overcrowding and insanitary conditions for their propagation'.⁵³

But the above expectation soon turned out to be merely good wishes on the part of the drafters. In the following Section, we will see how the then local society objected to the draft Bill and pressed the government to withdraw the Bill.

3. Public health vs. Private rights: controversies around the enactment of the PHBO

3.1 Landowners' objections

In the first reading of the draft Bill on 7 July 1902, Mr. C. S. Sharp, an unofficial

⁵² *HKH*, 27 November 1902, p.72. Here the petitioners are referred to those merchants and Businessmen (mainly Europeans) who presented two lengthy petitions in the year 1901 and urged the British Government to send independent sanitary experts to Hong Kong.

⁵³ Chadwick & Simpson, 1902, p.22.

member of the Legislative Council, pointed out that the low compensation scheme introduced by the PHBB gave rise to great concern and anxiety to property-holders in Hong Kong and also to mortgagees.⁵⁴ Actually, landowners in the Colony were almost all irritated by the low compensation scheme under the Bill. On 5 September 1902, Chinese landowners presented a petition to Governor protesting against the strict building regulations and low compensation scheme proposed by the draft Bill. On 28 September 1902, European landowners presented a petition on the same topic. On 3 December 1902, another petition was submitted by European landowners urging to relax height limitation of the building or elevate compensation scales.⁵⁵ Landowners' claims for more compensation were mainly based on the following two grounds.

First, landowners argued that the insanitary and overcrowding condition in Hong Kong had been fostered by previous public health laws and policies rather than the 'greediness' of landowners. Therefore, the colonial government should take the main responsibility for the cost of building improvements. The colonial government was reminded by European landowners that,

[The houses] were erected in conformity with the sanitary and building laws of the colony for the time being in force. A house in Hong Kong which the Bill would make insanitary has not only been hitherto tolerated by the Government, but is the very creature of the law; and, if innovations in the law compel the owner in the public interest to rebuild or alter his house, he should be compensated for any loss thereby occasioned him.⁵⁶

Chinese landowners expressed similar ideas in their petition and further added that the peculiar geographical formation in Hong Kong also put the location and sites of dwelling houses in a most difficult situation. Taking these social, legal and geographic factors into account, the Chinese landowner argued that 'the blame of erecting and occupying insanitary dwellings cannot be laid solely or indeed at all at the door of the present land-owners in the colony.' Fair and reasonable compensation was urged. However, the proposed ordinance offered compensation only under 'strangely limited circumstances', the result of which was 'to leave the owner of the land so acquired entirely at the mercy those whose avowed object is to acquire by resumption a maximum quantity of land at a minimum amount of cost.'⁵⁷

Second, the proposed draft Bill breached an important principle in English law.

⁵⁴ *HKH*, 7 July 1902, p.34.

⁵⁵ These three petitions were all enclosed in Despatch No.116 from Governor Blake to Secretary of State Chamberlain, 10 March 1903, CO129/316. To save space, these three petitions will be cited as Chinese petition, 5 September 1902, European petition, 28 September 1902 and European petition 3 December 1902 respectively in text.

⁵⁶ European petition, 28 September 1902, paragraph 5.

⁵⁷ Chinese petition, 5 September 1902, paragraphs 6-9.

European landowners pointed out that protecting private property right was not only the most established principle in English constitution but also firmly upheld by courts, ‘without compensation, a violation of the rights of private property will not be permitted even for the general good of the community’.⁵⁸ However, the draft Bill did not compensate for any sacrifice of private land and spaces required by the various new provisions on the enlargement of open space, limitation of building height and so on. At the request of Hong Kong’s landowners, local engineers and architects also prepared a detailed technical report on the Bill.⁵⁹ This report showed that,

Throughout the Bill (with the single exception aforesaid [viz. limited compensation for the seizure of insanitary houses] all the careful provisions of the English Acts for compensation wherever private rights are infringed have been scrupulously omitted.⁶⁰

Chinese landowners also made a careful comparison between the Bill and various English Acts on the topic of compensation and found that the two framers of the PHBB had ‘grossly distorted’ the compensation principles enshrined in English laws.⁶¹ Chinese landowners further complained that if they had known earlier the inadequate compensation system that would be set up under the proposed Bill, they would never have made such investments in landed property in the Colony. By saying this, Chinese landowners were almost threatening to withdraw their investment which would undoubtedly bring adverse impact on Hong Kong economy. Chinese landowners further urged upon the right to appeal which not only covered the right for asking a fair and reasonable compensation, but also the right to require the government to acquire the property in a proper way.⁶²

Apart from low compensation, the draft Bill was also criticised for making no mention of any scheme for the spreading out of the population and for the housing of the working

⁵⁸ European petition, 28 September 1902, paragraph 5.

⁵⁹ It was said that this technical report was enclosed to the European petition dated 28 September 1902. However, the Governor did not attach this enclosure to his Despatch No.116 to the Secretary of State. This study has tried in vain to find this technical report in other sources. But some parts of the technical report had been cited by the European landowners in their petition.

⁶⁰ Cited from European petition, 28 September 1902, paragraph 12.

⁶¹ Apart from Imperial Acts of the Public Health Act, 1875, the Housing of Working Class Act, 1890, some Private Municipal Acts, like the London Building Act, 1894, The Glasgow Building Act, 1900 were also quoted by the two petitions to prove the important principle of compensation for the sacrifice of private property rights for public purposes. For instances, section 155 of the Public Health Act, 1875 empowered the local authority to regulate the building line, subject to the compensation of any owner injuriously affected. In contrast, section 6 (19) of the Bill provided nothing for the same regulation of building line in Hong Kong. Sections 21 and 38 of the Housing of Working Class Act, 1890 prescribed that the removal of obstructive buildings were subjected to ‘fair market price’ compensation.

⁶² Chinese petition, 5 September, paragraphs 11-12.

classes and poorer inhabitants, who would be the most affected by new provisions.⁶³ The proposed Sanitary Commissioner and the wide power delegated upon him by the Bill were criticised as ‘a despotic system’ and ‘autocratic in the extreme’.⁶⁴ Finally, the Governor was urged to withdraw the Bill and prepare a new one which would comprise the principles mentioned in the petitions, especially to ‘provide compensation when private and vested rights are injuriously affected for the public benefit’.⁶⁵

3.2 The colonial government’s response

The landowners’ eloquent petitions made the government of Hong Kong realise the complicated demands that could be placed on it by local society in the colony. As mentioned above, the first draft of the bill was introduced to give effect to the wishes of European merchants who had petitioned their views in the middle of 1901. But by the September of 1902, the landowners’ pleadings dominated Hong Kong society. The colonial government came to take the view that ‘If it [the original draft Bill] had been forced through, it would not have been for the general benefit of the community’.⁶⁶

After careful consideration of the petitions, Blake decided to withdraw the original draft Bill, ‘principally on the ground that no adequate provision had been made in it for compensation in certain cases’.⁶⁷ According to the Governor’s own words, even before the receipt of the petitions, he had decided to prepare a new draft Bill in order to provide compensation ‘in those cases where precedent was found in English laws or to give a discretionary power to the Governor to grant exceptions’.⁶⁸ On 7 November 1902, the second draft of the Bill was published in the Hong Kong Government Gazette. Compensation and/or Governor’s discretionary power were added to the majority of contentious building clauses, for instances, the reducing the depth of buildings, the setting back of buildings, and the lessening in the height of buildings (sections 150, 178 and 186 of the second draft Bill).

However, not all officials in the government of Hong Kong ardently supported the

⁶³ Chinese petition, para. 9.

⁶⁴ Chinese petition, para.8; European petition, 1902a, para.8.

⁶⁵ European petition, 1902a, para.12.

⁶⁶ *HKH*, 27 November 1902, p.73.

⁶⁷ Henry Arthur Blake was Hong Kong’s twelfth Governor (1898-1903). As will be mentioned below, Blake was welcomed by local Chinese for his sympathetic attitudes towards the issues concerning Chinese welfare. The *Bauhinia blakeana* was named after him, as Blake was very interested in botany. It became an emblem of Hong Kong in 1965 and has been the official flower of the Hong Kong SAR since 1997.

⁶⁸ Despatch No.116 from Blake to Chamberlain, 10 March 1903, CO129/316:308.

principle of compensation. The Attorney-General commented that in allowing for compensation for building reconstruction, 'the Government has stepped farther than they need absolutely have done', as 'there was precedent for not doing it'. One example that the Attorney-General commented on was the Buildings Ordinance No. 15 of 1889, which limited the height of buildings without any compensation. And the Attorney-General insisted that the new Bill did not grant compensation for the abolition of windowless cubicles.⁶⁹ Whether the inadequacy of compensation had accounted for the relative ineffectiveness of the Buildings Ordinance, 1889 was a question beyond the Attorney-General's consideration. Actually, some government officials insisted it was some 'unwise and foolish' objections raised by the Chinese residents of Hong Kong against the 'most important provisions' in the Bill of the Public Health Ordinance No.24 of 1887 that had brought the plague to the Colony. A very important figure within the Hong Kong government, F. H. May, the Colonial Secretary (1901-1911), did not disguise his dislike of the standpoint of Chinese unofficial members sitting in the Legislative Council,

'How unwise, how foolish, were the men of those days who opposed that Bill. What a train of sorrow and sickness did their action in those days bring upon this Colony? I feel certain ...that ... my friend the Senior Unofficial Member [Ho Kai], who was at that time a member of this Council, and who has since, I am sure, learned that the health of Chinese can be improved by the adoption of Western sanitary measures'.⁷⁰

⁶⁹ *HKH*, 27 November 1902, p.73. Perhaps owing to the popularity of windowless cubicles in the Colony, if compensation was granted in such case, the government would have to prepare a large sum of money from ratepayers. Compensation for windowless cubicles became the only controversial topic in the second reading of the new Bill. Ho Kai argued that windowless cubicles were rather the typical product of colonial laws and policies. So it should be the government's responsibility to give every cubicle a window and proper ventilation and light. *HKH*, 27 November 1902, p.75. The colonial government and European community were sided together on this point and refused to grant compensation to 'greedy' landowners who enriched themselves by overcrowding tenants in low cost and 'disgraceful conditions', *China Mail*, 28th July 1902; *HKH* 27 November 1902, pp. 73 and 78. Both sides had merits in their respective arguments. If full compensation was unfair to ratepayers, non-compensation would also be an unwise and irresponsible manner of the government to the develop Hong Kong's public health. Without any economic incentive, few landowners desired to improve cubical rooms. As will be seen in Section 4.2, profit-driven landowners would rather choose to bribe sanitary officials than to comply with the niggardly public health laws.

⁷⁰ *HKH*, 27 November 1902, pp.73-74.

Although Ho Kai defended himself well in the Legislative Council, it was doubtful whether Ho Kai's eloquent arguments did in fact change European officials' prejudices against Chinese 'insanitary' living conditions.⁷¹

Surrounded by those senior officials who had less open minded to Chinese subjects than himself, Blake's decision to grant compensation was particularly valued. In response to the criticisms that the Bill offered no scheme of spreading labouring classes and no remedial measures to house those displaced by the new law,⁷² Blake explained with patience,

'The Ordinance is not going to act as a moment's notice. Action must necessarily be slow and the broad question will present itself to us whether it is better that we should suddenly undertake a large measure of socialist legislation by the Government entering with the public money into competition with those whose business it is to build and supply houses for the accommodation of the people or whether we should leave that to the ordinary operation of commercial principles; and my own view is that it is better to leave it to the ordinary operation, especially here in Hong Kong where there are societies and individuals who have money and are quite ready to supply it when they find that the public require it.'⁷³

From the above explanations, we can see that although personally, Blake might like to afford public houses for the poor, the then social conditions did not allow such a dramatic 'socialist' change.⁷⁴ Blake also explained the reason for him to add the above observation, as he understood 'the Attorney-General does not wish to answer these questions, as perhaps he has not studied these matters so carefully as I have done for two or three years.' This added explanation to some extent confirmed the discrepancy between Governor and the Attorney-General. Perhaps, the broader social impact of the law was always a question beyond the concern of practical lawyers. But for Blake, as a Governor, he needed to bear in mind the

⁷¹ Ho Kai emphasised that he had never made the assertion that the Chinese could not be improved by sanitary methods. What he did oppose were the sanitary measures which were introduced hastily without having been thoroughly *explained* to the Chinese: *HKH*, 27 November 1902, p.74. Here we notice that Ho Kai used the word 'explained', not even the word 'consulted'. Perhaps Ho Kai knew well that under the colonial setting, Chinese being explained on public policies had already been an extravagant requirement, let alone being consulted. For instance, despite the fact that Chinese interests would be affected materially under this new Ordinance, no Chinese version of the PHBB was prepared and printed for the public, Chinese petition, paragraph 4.

⁷² According to the colonial government's estimate, the new restrictions imposed upon cubicles would remove from 30,000 to 40,000 people. And if only two cubicles were allowed on a floor, at least 100,000 people would be unhoused. *HKH*, 12 December 1902, p.87. The then available vacant houses could not accommodate such a big number of people. Owing to this large scale displaced population, the restrictions on cubicles were to some extent relaxed in the second draft.

⁷³ *HKH*, 27 November 1902, p.79.

⁷⁴ The humanitarian process of Hong Kong's public health legislation started in the late 1920s. The broader social, political and economic conditions for this humanitarianism will be discussed in some details in Section 4.

general community's interests rather than allowing a small section of powerful and rich European colonists to dictate policy. Thus, instead of deploying his political skills and governmental authority to force through the original Bill, Blake choose to compromise. Underpinned by his Governor's authority, a Bill 'in some particulars rather absurd,' as commented by the Hon. C. S. Sharp, 'has been turned into one of much more reasonable and workable character'.⁷⁵ The second draft Bill was passed by the Legislative Council without any significant divisions surfacing. Meanwhile, a sum of HK\$ 410,000 was estimated by the colonial government as being necessary for loans for house improvement and resumption in the coming year of 1903. Blake emphasized in his dispatch that this sum of HK\$ 410,000 was the lowest estimation that could be managed. This time, the British Government back in London granted the loan immediately in order to avoid further delay to Hong Kong's public health reform and improvement.⁷⁶

According to the Governor's report, the European landowners were 'fully' satisfied with the provision made for compensation, and the Chinese representatives on the Legislative Council were 'apparently equally satisfied'.⁷⁷ But the Secretary of State doubted the state of 'full' satisfaction among European landowners, singling out the word 'fully' in the Governor's dispatch with a question mark. These doubts were borne out. Indeed, after the second draft Bill was published, European landowners presented a second petition urging the Governor further to consider one more clause, namely the section 185(3) on the height limitation of buildings, where compensation, in European landowners' opinion, was still improperly withheld.⁷⁸ Besides, European landowners' plea of compensation for their curtailed property value in the European Reservation and Hill District owing to the approximating of Chinese houses was also not supported.⁷⁹

In contrast to the European landowners, many of the leading Chinese residents in

⁷⁵ *HKH*, 27 November 1902, p.76.

⁷⁶ 'Despatch from Blake to Chamberlain', 10 March 1903, CO129/316.

⁷⁷ Despatch No.116, CO129/316, p.308.

⁷⁸ European petition, 1902b.

⁷⁹ According to European landowners' descriptions, 'an extensive tract' of the European reservation area would be reduced by section 6 (55) of the Bill. Many large and costly European residences had been built within this tract whose values would be depreciated by the immediate effect of the approach of Chinese tenement houses. Thus the European landowners required that 'if it is necessary thus to increase the Chinese building area, your petitioners submit that it should only be done on terms of compensation to owners who are injuriously affected thereby' (European petition, 28 September 1902, paragraph 6). Instead of granting compensation, the colonial government surveyed the European reservation boundary carefully and avoided influencing those 'large and costly' European houses. On the other hand, the Hill District was elevated from above 600 feet contour to above 700 feet contour, so the living space of Chinese community in the Island was to some extent enlarged.

Hong Kong were fairly well satisfied with the second draft. Indeed, after sixty years of colonial rule, this was the first time that Chinese objections and suggestions had been formally and systematically absorbed into Hong Kong's public health legislation. In this sense, the colony's local Chinese community had reason to rejoice, for their increasing influence on Hong Kong's legislation was clear. When the Public Health Ordinance No.24 of 1887 was under preparation, Dr. Ho Kai, had protested against the low compensation system proposed by the said Ordinance.⁸⁰ But at that time the colonial government of Hong Kong, under instructions from the British Government back in London, did not pay much attention to landowners' objections, especially the Chinese protests.⁸¹ The colony's Chinese community leaders attributed their achievement in legislative participation to Governor Blake's sympathetic and open attitude towards Hong Kong's Chinese subjects.⁸²

4. Law in the field: irregularities and reforms

The Public Health and Buildings Ordinance was supposed to be a landmark moment in Hong Kong's public health history.⁸³ Yet there was nothing new to its legislative rationale. In terms of its contents, this Ordinance was at best a synthesis of previous sanitary and building ordinances and regulations. The Public Health and Buildings Ordinance consisted of six parts, 271 sections, among which more than 2/3 sections were dealing with building problems. From the height of a building to the indoor arrangement, from the resumption of insanitary dwellings to the abatement of overcrowding, Ordinance No.1 of 1903 set up a legal framework systematically regulated the building issues. As we know, the major object of the PHBO was to suppress diseases generated by overcrowding and insanitary conditions. But housing and building problems were not just sanitary problems – they were also intertwined with economic, cultural, social and political elements. Due to its strict controls of

⁸⁰ 'Dr. Ho Kai's Protest against the Public Health Bill', dated on the 2nd December 1886, in *SP*, no. 30 of 1887.

⁸¹ '[Chinese petition against the Public Health Bill]' in CO129-237, pp.16-33.

⁸² Sir Henry Arthur Blake was one of the mostly welcomed Governors among the Chinese community of Hong Kong. A petition signed by broad cross-section Chinese was presented to the British Government in retaining Blake to be Hong Kong's Governor for another term. In that petition, Blake was particularly appreciated on his contributions in the Public Health and Buildings Ordinance. However, European community kept indifference to Chinese ardent retaining of Blake.

⁸³ In their preparation of the draft of the Public Health and Buildings Ordinance, the two British experts Chadwick and Simpson actually transplanted British most developed public health laws to colonial Hong Kong. As some scholars have commented, the Ordinance No.1 of 1903 was modeled on the Imperial Public Health Act of 1875 and subsequent amending Act, which dealt not only with sanitary administration but also with the regulation of streets and buildings. See Kerrie L. MacPherson, *Invisible Borders: Hong Kong, China and the Imperatives of Public Health*, in *Public health in Asia and the Pacific: historical and comparative perspectives*, Milton J. Lewis, Kerrie L. MacPherson, eds. London, Routledge Press, 2008, p.45.

Chinese houses, it would not be exaggerate to claim that the PHBO was one of the most socially relevant, complicated and controversial public health laws in Hong Kong's legal history.

4.1 Corruption and bribery were rampant

When the PHBO was under preparation, both the experts and law drafters had aimed to produce a law which could avoid the necessity for further sanitary legislation, at least for the next few years. This soon turned out to be merely a matter of hope. The PHBO was an Ordinance which needed frequent revision. Within the span of its 33 years of life, the PHBO was subject to 13 amendments, of which 9 amendments dealt with building provisions.⁸⁴ Even in 1903, almost immediately following the inception of the Ordinance No.1 of 1903, some important amendments were introduced. The principle concerns of these amendments were building regulations. Four years later, serious corruption was found to be involved in the administration of the sanitary and building regulations enacted by the Public Health and Buildings Ordinance, 1903. A Commission was appointed by the Governor to investigate into the irregularities that were said to exist in the administration of the said Ordinance.

After a prolonged investigation,⁸⁵ the Commission submitted a lengthy report, which concluded that indeed 'not only great irregularities but [also] corruption and bribery were rampant in the Sanitary Department.'⁸⁶ According to the Commission's investigation, the main reasons for the prevalence of corruption were limitations in the regulations and failures in administration under the Ordinance No.1 of 1903, particularly the issues of dealing with open space and cubicles.⁸⁷ We might put this in another way: the building restrictions were too stringent for the then difficult social conditions, and the compensation offered to cover the costs of house re-construction was too low. In addition, the Sanitary Board had been bestowed too much power in the administration of the building regulations. Unrealistic building restrictions, extremely low compensation and over-robust administrative power, these three factors encouraged a climate of bribery and corruption under the PHBO.

Based upon the Commission Report, the colonial government introduced an

⁸⁴ The Public Health and Buildings Ordinance, 1903 remained in force till the year 1935, when it was replaced by the Urban Council Ordinance No.7 of 1935.

⁸⁵ The Commission was appointed on 10th May 1906. After ten months, this Commission was able to submit a report of nearly 300 pages, evidences inclusive on 19th March, 1907. During this prolonged investigation, the Commission sat regularly in all 60 Meetings, extending over 215 hours, and examined 183 witnesses, of whom 134 were Chinese. Some delay of the investigation was occurred due to the resignation of the first Chairman of this Commission.

⁸⁶ The Commission's Report, paragraph 11.

⁸⁷ The Commission's Report, paragraph 23.

amendment to the PHBO.⁸⁸ This new amendment relaxed certain building restrictions, confined the Sanitary Board's power and transferred the supervision of the enforcement of many building regulations to the Public Works Department and Building Authority. But these were mainly administrative adjustments. The core problems in the implementation of the PHBO remained unresolved.

As long as the colonial government stuck to the old legislative rationale, viz. deeming Chinese houses and overcrowded labouring classes as the causality of infectious diseases, and kept a tight financial cap in granting compensation, the conflicts between public health and private rights would not be resolved. For instance, in 1911, the colonial government once again intended to restrict the height of buildings to ensure the ventilation and sanitation of streets.⁸⁹ Mr. Pollock, a then un-official member of the Legislative Council, overtly offered the criticism that the proposed amendments 'confer most extreme arbitrary powers upon the Building Authority.' And 'if certain of its provisions were carried out to their fullest extent', the amendment 'would operate harshly or unfairly on property owners'.⁹⁰ Under the pressure of the Legislative Council un-official members' fierce objections, the draft amendment to the PHBO was aborted.

Starting from 1916, mainland China suffered a ten-year warlord period. Many Chinese fled to Hong Kong in order to escape the civil unrest and social turbulence in mainland China. The resulting influx of Chinese immigrants exacerbated the condition of overcrowding. From 1920 onwards, the public health threat had become one of tuberculosis and other contagious diseases which, from western medical point of view, had a close connection with daily living conditions. Indeed, it would seem that the prevalence of tuberculosis in Hong Kong resulted in the colonists' long standing 'sanitary-order anxiety' being intensified. And the overcrowding of Chinese houses in the colony was once again targeted by the public health laws. In 1929, a Bill for the PHBO Amendment which had been rejected by the Legislative Council in 1911 was once again submitted by the colonial government. This time, the same amendment was passed.⁹¹ Under the threat of the outbreak of further epidemics, the colonists' prejudice against Chinese sanitary conditions was intensified. And laws of drastic character were more easily put on the Hong Kong statute book.

⁸⁸ Public Health and Buildings Amendment Ordinance, No.14 of 1908.

⁸⁹ A Bill for the Public Health and Buildings Amendment Ordinance, 1911, Hong Kong Government Gazette (Supplement), 22 December 1911, pp.966-969.

⁹⁰ *HKH*, 21 December 1911, pp.255-256.

⁹¹ The Public Health and Buildings Amendment Ordinance No.30 of 1929, provisions 4-5.

4.2 Towards professionalisation and humanitarianism

By the end of the 1920s, the colonial medical authorities started to review the sanitary measurements against plague. In his annual report, Wellington, the then Director of Medical and Sanitary Services pertinently pointed out that the,

‘Plague has practically disappeared from Hong Kong and the same may be said of most towns in South China. The disappearance in Hong Kong may be and probably is due in some degree to the sanitary measures which have been and are being taken but this cannot be the case in many of the Chinese towns where the conditions are as they have always been. The fact is that the cause of the rise and fall in plague has not yet been satisfactorily explained.’⁹²

Actually, in the early 1900s, the colonial government had to some extent noticed that the outbreak of plague was not so closely related with Chinese filthy living conditions. For instance, Hunghom, a newly built quarter of two storied houses and inhabited by the best paid Chinese working men, became the worst place to be attacked by the plague in 1901.⁹³ In addition, many plague cases occurred in houses where sanitation conditions were fairly good.⁹⁴ It was also observed that “in spite of the many workers and of the most drastic measures,” the formidable epidemic came to an end in Hong Kong ‘not one day sooner than it ceased of its own accord in the neighbouring City of Canton where no steps whatever were taken to combat the Plague’.⁹⁵

The plague disappeared mysteriously from 1930 onwards. The medical authority acknowledged that western medical science could not give a satisfactory explanation for the rise and fall of the plague; neither had the stringent sanitary measures contributed to the disappearance of the plague. These official acknowledgments to some extent proved the fallacious nature of the sanitary syndrome which afflicted European colonists for decades. The previous very ‘sound’ connection between housing sanitation and infectious diseases received increasingly suspects among colonial medical professionals. In an era of professionalization of medicine, the old regime under the Public Health and Buildings Ordinance, 1903 was increasingly out of place.

The appointment of Dr. A. R. Wellington as the Director of the Medical and Sanitary Service was the first step of Hong Kong’s public health reforms in the 1930s.⁹⁶ According to

⁹² *Medical and Sanitary Report for the Year 1930*, pp.27-28. The series of Medical and Sanitary Reports recorded and analysed the cases of plague every year. From the year of 1929 onwards, the medical authorities started to reflect the effect of anti-plague measures.

⁹³ Despatch No. 244, CO129/305, pp.466-467; CSCHK, p.6

⁹⁴ Enclosure 7 to Despatch No.244, CO129/305, pp. 486-495; CSCHK, pp.17-20

⁹⁵ ‘Memorandum on Petition dated 25 June 1901’, Enclosure No.1 to Despatch No. 262 from Governor to Secretary of State, 18 July 1901, CO129/305, p.712; CSCHK, p.58.

⁹⁶ ‘Appointment of Director of Medical and Sanitary Services’, CO129/511/15, dated from 3rd

Wellington's observations, one fundamental fault of the old public health system was the division of responsibility among 'a number of independent **lay authorities**' [bold added] which made the works of 'co-ordination and co-operation to a great extent lacking'.⁹⁷ In Wellington's opinion, it should be medical professionals rather than lay persons taking charge of Hong Kong's public health system. In other words, professionalisation was the prescription given to Hong Kong's public health system. We might still remember that at the turn of the twentieth century, when Chadwick and Simpson prepared the draft of the Public Health and Buildings Ordinance 1903, it was Chadwick, viz. a civil engineer's opinions rather than Simpson, a medical Professor's opinions, which dominated the draft bill. Three decades then passed, and this time, the colonial government took the advice of medical professionals willingly.

Based upon Wellington's various reports, a series of public health reforms took place.⁹⁸ During the reforms, building regulations were separated from the public health legal complex. The Buildings Ordinance No.18 of 1935 regulated buildings mainly from the perspectives of construction technology and safety. The sanitary provisions on buildings were absorbed by the Public Health (Sanitation) Ordinance No.15 of 1935. The 1935 reform established a public health legal complex consisting different ordinances with each dealing with one specific aspect of public health.⁹⁹

After 33 years' combination under the PHBO, 1903, the building laws and public health laws were finally separated. The separation between building and public health regulations indicates a change of legislative rationale for public health. Although by the time 1930s, overcrowding was still acute among Chinese laboring class, the colonial government had realised the limitations in its thinking: overcrowding was not just a sanitary problem that could be improved by strict public health laws but had its roots in complicated social, economic and even political conditions. Wellington suggested that the colonial government

September to 19 December 1928, pp.1-31.

⁹⁷ A. R. Wellington, 'Changes in the Public Health Organization of Hong Kong during the period 1929 to 1937', in *SP, no.4 of 1937*.

⁹⁸ For a concise background of Hong Kong's public health reforms in the 1930s, see Wellington's 'Report of Changes in the Public Health Organization of Hong Kong during the period 1929 to 1937'. For a detailed account of the history of Hong Kong's public health development and the blueprint of the 1930s' reforms, please read A. R. Wellington, 'Public Health in Hong Kong --- The need for re-organization of the Medical and Sanitary Services and for the Establishment of an up-to-date System', in CO129/531/13, pp.18-104.

⁹⁹ The PHBO 1903 was replaced by the Urban Council Ordinance No.7 of 1935 and divided into the following ordinances: the Public Health (Quarantine and Prevention of Diseases) Ordinance No.12 of 1936, the Public Health (Food) Ordinance No.13 of 1935, the Public Health (Sanitation) Ordinance No.15 of 1935 and the Public Health (Animals and Birds) Ordinance No.16 of 1935.

should implement new welfare policies, such as housing the laboring class.¹⁰⁰ This suggestion was also adopted by the government. The colonial government's positive attitude towards the welfare of the Chinese community in Hong Kong stood in sharp contrast with its previous indifference. We might also remember that in 1902 even Simpson's mild suggestions of improving communications with Chinese community were scorned off by the then colonial government.

The changes in social attitudes and social conditions in the 1920s encouraged more enlightened views of public health regulation. According to some scholars, the Canton-Hong Kong Strike (1925-1926) had pushed the colonial government to pay more attention to the welfare of Chinese laboring classes.¹⁰¹ Since then, various measures were taken to care and improve Chinese living conditions. In 1935, a Housing Commission was appointed 'to enquire into the housing difficulties in Victoria and Kowloon with special reference to overcrowding and its effect on tuberculosis'. Three years later the Commission submitted a Report.¹⁰² In this document, the topic of the relation between tuberculosis and overcrowding was considered to be not so important. And the complicated subject of overcrowding and housing the poor was investigated and discussed in great detail. The Housing Commission reported that 'overcrowding raises almost entirely from poverty which in Hong Kong is so dire that many families cannot afford rent at all.' And 'the provision of adequate housing for the poorer classes cannot be left to private enterprise unassisted.'¹⁰³

As we can see from the wording of the Report, the problem of Chinese overcrowding was treated with a reasonable degree of sympathy and understanding. And private enterprise in property was no longer accused of being 'greedy' but as a sector to be assisted by the government. Largely based upon the Housing Commission Report, a draft bill on town planning was deliberated upon and passed in the Legislative Council. Although the brand new Town Planning Ordinance No.20 of 1939 had altogether only 14 articles, it offered a long and splendid preamble, which declared that it was,

An Ordinance for the promotion of the health, safety, convenience, and general welfare of the community by making provision for the systematic preparation and approval

¹⁰⁰ A. R. Wellington, 'Medical & Sanitary Report for the Year 1932', Appendix M to *Hong Kong's Administrative Reports for the year 1932*, pp. M56-M57.

¹⁰¹ The Canton-Hong Kong Strike lasted 16 months from June 1925 to October 1926 and brought huge economic lost to colonial Hong Kong. For details accounts of the Strike and its impact on Hong Kong's governance, please read Zhongxia Deng, Shenggang Dabagong, in Meibao Cheng and Yule Zhao edited, *Xianggang Shi Yanjiu Lunzhu Xuanji*, Hong Kong: Hong Kong Open University Publish, 1999, pp.194-216.

¹⁰² 'Report of the Housing Commission', dated the 11th October 1938 in *SP, No.12 of 1935*, pp.257-287.

¹⁰³ Note above, pp.260-261.

of plans for the future-lay out of existing and potential urban areas as well as for the types of buildings suitable for erection therein.

With enlightened social consciousness and increased medical professional participation in public health legislation, the ‘filthy and overcrowding’ Chinese living space finally ceased to be the scapegoat of Hong Kong’s infectious diseases.

Conclusions

Public health problems in Hong Kong as elsewhere in the world had complicated social, economic, political and cultural roots. In colonial settings, public health problems were often infused with strong racial discrimination. The so-called ‘public’ health turned out to be the colonial rulers’ health first and foremost. Chinese, together with their ‘filthy and overcrowding’ living space were deemed to be the cause of infectious disease. Influenced by the ‘sanitary syndrome’, the Public Health and Buildings Ordinance 1903 was a law filled with strong orientalist prejudice. Chinese living space was put under strict control without proper compensation for those who lost or who had reduced property rights. Under the old legislative rationale, the approach was one of stricter enforcement, but this generated more resistance against the law, with rampant corruption and bribery as attendant problems. While at the same time the real problem of public health remained unresolved.

It was not until the 1920s that the colonial government started to realize the social complexity of the overcrowding problem. And the colonial government did respond positively, accepting responsibility for investing and improving the living conditions of Chinese labouring classes. Since then, Hong Kong’s public health laws gradually walked towards a more professional and humanitarian direction. It almost took the colony a hundred years to achieve this transformation of legislative logic, that is, the ‘filthy and overcrowding’ condition of Chinese living space was no longer considered a menace to public health subjected to stringent regulation but a result of poverty and inequality waiting to be improved by the law. There are still many lessons we can learn from Hong Kong’s legal history of public health. In the following chapter, we will explore the medical aspects of Hong Kong’s public health development, particularly on the impact of the British style public health system upon traditional Chinese medicine.

Chapter Six

Exclusion as Oppression: A Quest for Chinese Medicine's extra-legal Status

Medicine, to some extent, is a kind of cultural signal. Different medical traditions embrace different cultural concepts and values. When British expatriates first occupied Hong Kong in the early 1840s and tried to regulate public health by legislation, how best to deal with Chinese medicine became a difficult problem. Facing a different medical system deep-rooted in native society as an integrating and integral part of indigenous culture, medical legislation was not merely a matter of legislative technique but required prowess for tackling complicated issues such as cultural conflicts.

Indigenous medicine's encounter with western medicine has been a very important issue during the expansion of colonial power.¹ When western colonizers arrived in the East as self-professed representatives of civilization and science, oriental medical traditions were often considered 'backward' and 'dangerous', incompatible with scientifically-based western medicine.² Historians of India have made significant contributions on the study of disease and medical practice within a colonial context, and to date, there has been a number of powerful academic works on the history of imperialism and colonial medicine.³ Among them, David Arnold's seminal book on *Colonizing the Body* is an important contribution. In 2001, Mark Harrison and Biswamoy Pati offered creative discussions about the relations between health, medicine and empire, especially focusing on the relationship between medicine and imperialism, the complexity of relations between colonizers and the colonized in the area of

¹ Andrew Cunningham and Bridie Andrews defined the definition of 'scientific medicine', which implied the necessity for persuasion. See Andrew Cunningham & Bridie Andrews (eds.), *Western medicine as Contested Knowledge*, Manchester & New York: Manchester University Press, 1997.

² In Indian, western medicine was always self-evident a 'colonial science'. See David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India*. Berkeley: University of California Press, 1993, pp. 290-294. See also Lewis M, MacLeod R, ed. *Disease, Medicine and Empire – Perspectives on Western medicine and the Experience of European Expansion*, London and New York: Routledge, 1988.

³ David Arnold, *Colonizing the Body*; Mark Harrison, *Public health in British India: Anglo-Indian preventive medicine 1859-1914*, Cambridge University Press, 1994; Andrew Cunningham & Bridie Andrews (eds.), *Western Medicine as Contested Knowledge*, Manchester & New York: Manchester University Press, 1997; Deepak Kumar, ed, *Disease and Medicine in India-A Historical Overview*, Tulika Books, New Delhi, 2001; Douglas M. Haynes, *Imperial Medicine: Patrick Manson and the Conquest Tropical Disease*, University of Pennsylvania Press, 2001; Mark Harrison & Biswamoy Pati, *Health, Medicine and Empire: Perspectives on Colonial India*, London, Sangam Books, 2001; Mridula Ramanna, *Western medicine and Public Health in Colonial Bombay: 1845-1895*, New Perspectives in South Asian History, Delhi: Orient Longman, 2002; Alison Bashford, *Imperial Hygiene: A Critical History of Colonialism, Nationalism and Public Health*. Basingstoke: Palgrave Macmillan, 2004.

medicine. In his important article, Mark Harrison describes the encounter between the European colonizer and India medicine, analyses the Orientalist engagement of colonizers regarding Indian medicine as flawed and outmoded. With the growing ascendancy of western medicine, the indigenous medicine was marginalized by the colonial medical system.

Chinese medicine in the British Colony of Hong Kong suffered the burden of similar 'orientalist prejudice'. But, in practice, so as help to maintain colonial order, the colonial government did not robustly outlaw indigenous medical traditions in Hong Kong. Instead a cautious legislative approach and policy was often followed when it came to excluding or replacing indigenous medicine. Thus the transplanting process of medical laws from Britain to Hong Kong was often more complicated than one might have imagined. The interactions between the Chinese community and colonial authorities in Hong Kong, as will be seen in this Chapter, also contributed to creating a complicated Hong Kong's medical legislative history.

Following a *laissez-faire* policy,⁴ the colonial Hong Kong government had no intention to interfere with Chinese customs, including Chinese medicine, for much of the time in the second half of the nineteenth century. However, the plague dramatically changed the scene and brought Chinese and western medicine into direct confrontations. Medical laws enacted with no intention to interfere with the freedom of Chinese style medical practitioners gradually became a powerful force for marginalizing, restricting and even replacing Chinese medicine. Without a proper legal status for Chinese medicine, as will be seen in Section 2, the key Chinese leadership institution in Hong Kong, the Tung Wah Hospital, was unable to defend its autonomous identity as a purely Chinese style hospital. Section 3 investigates the colonial normative medical framework under which Chinese medicine was systematically excluded and oppressed. Through a case study of the Tung Wah's westernisation, Section 4 finds that colonial medical laws played an important role in marginalising Chinese medicine. Section 5 further explores the legal implications of the Tung Wah's westernisation and makes some reflections on the nature of customary law.

1. Laissez faire policy to Chinese medicine

1.1 Segregation between Chinese and western medicine

Chinese medicine is a very distinct medical system in terms of medical theories and treatments, and differs in many ways from western medicine. The latter is mainly based upon laboratory testing and emphasizes the disease causality of germs, while the former belongs to

⁴ The policy indicates that the colonial government possessed a limited role in colonial society, especially of its deliberate policy of indirect rule with economic and political non-intervention. See Tak-Wing Ngo ed., *Hong Kong's History: State and Society under Colonial Rule*, by Routledge, London and New York, 1999, pp.3-5.

a more naturalistic medical approach, emphasizing holistic understanding of disease and illness.

Nowadays, more and more people would like to say that Chinese medicine and western medicines are complementary. Yet in the early period of colonial Hong Kong, mutual prejudices between Chinese and western medicines prevailed between the Chinese and European communities in the colony. On the one side, the Chinese residents of Hong Kong were suspicious of the effects of western medicine often displayed what we might call a 'xenophobic ethos' and resisted being treated by western doctors for these reasons. Chinese subjects especially dreaded surgery and amputation, which were not only strange to the Chinese style of treatment but also contrary to core Chinese values. In particular, according to Confucian teaching, maintaining the integrity of one's body was seen as a most important aspect of fidelity to one's ancestors.⁵ It would not be an exaggeration to say that the Chinese at that time would prefer death to being treated by foreign doctors.⁶ On the other side, Europeans who upheld scientific principles looked down upon Chinese medicine. Dr. Ayres, the Colonial Surgeon (1873-1897) constantly criticised Chinese medicine as being 'useless' and 'dangerous'.⁷

Against such backdrop, segregation appeared to be the most convenient way for the government to regulate medicine in colonial Hong Kong. And indeed, when Hong Kong

⁵ It is true that traditional Chinese medicine was not good at surgery. Influenced and to some extent limited by Confucianism, Chinese medicine had been reluctant to cure disease through surgery or operation. As we know Xiao (孝, liberally fidelity) is one of the core thoughts of Confucianism. It is recorded in the Xiaojing (《孝经》, On Fidelity) that Confucius once explained to his disciples his understanding of the Xiao in the following terms: '身体发肤, 受之父母, 不敢损伤, 孝之始也', which translated into English is: Our body and hair are given by parents, we dare not to break or damage the body and hair. This is the beginning of Fidelity.' Since that time one's caring and respect to the 'completeness' of body has been seen as an important indicator for one's royalty and fidelity. If a doctor dared to open one's body or take amputation for treatment, either the doctor or the patient would be cursed. Against this cultural background, it is not possible for Chinese medicine to develop surgery. But this cultural limitation also gave Chinese medicine chances to develop other methods of diagnosis and treatment such as 'feeling the pulse' (脉诊, *mai zhen*) and acupuncture. For details of the characteristics of Chinese medicine, see Hua Chen, *Zhongyi de kexue yuanli (Chinese medicine's Scientific Principles)*. Shangwu chubanshe, 1991. Chinese methods of acupuncture and bone-setting, as recorded by Hong Kong's first Chinese medicine hospital, were also efficient to cure certain diseases which in western medicine might have to take operation. Yang, Xiangyin 'Zhimin quanli yu yiliao kongjian: xianggang donghua sanyuan zhongxiyi fuwu bianqian (1894-1941)' ('Colonial Power and Medical Space: The Transformation of Chinese and Western Medical Services in the Tung Wah Group of Hospitals, 1894-1941') Ph.D. diss., Department of History, Chinese University of Hong Kong, 2007, pp.169-181.

⁶ Ernest John Eitel, *Europe in China*, Hong Kong: Oxford University Press, 1983, p.462. Elizabeth Sinn, *Power and Charity: the early history of the Tung Wah Hospital*, Hong Kong: Oxford University Press, 1989, pp.19-22.

⁷ See the original annual report of the Colonial Surgeon for 1874, in Sanitary Reports (Hong Kong) Laid before the Legislative Council, 1879-1880 (<http://sunzi.lib.hku.hk/hkgro/view/a1879/2449.pdf>).

introduced the first medical legislation, viz. the Medical Registration Ordinance No.6 of 1884, this approach was adopted in the sense that a laissez faire policy was the basic principle adopted for 'regulating' Chinese medicine.

1.2 The Medical Registration Ordinance, 1884

On 3 May 1882, a group of western qualified medical practitioners submitted a petition to the colonial government praying to extend British medical laws regulating the qualifications of medical practitioners in medicine and surgery to colonial Hong Kong.⁸ Two days after receiving the petition presented by medical practitioners, the Attorney General responded on behalf of the colonial government.

The Attorney General pointed out that 'the petition is not quite accurate as regards the present state of law'.⁹ Since being a Crown colony, Hong Kong was automatically under the jurisdiction of the Imperial Act, 21 and 22 Vic., Cap 90.¹⁰ Thus every person registered under the British Medical Act 'was entitled according to his qualification to practice medicine and surgery in this Colony and to sue for his charges.'

What the petitioners really desired, the Attorney General explained, was a 'Register' upon which were entered the names of all persons entitled to practise medicine and surgery in the Colony. The Attorney General suggested the Register as a compromise in acknowledging the following three categories of medical practitioner,¹¹

- '(a.) All persons in the Colony now entitled to practise in the Colony under the Imperial Act 21 and 22 Vic., Cap.90.
- (b.) All persons in the Colony who have been registered in any other British Colony.
- (c.) All persons in the Colony who hold a diploma, licence, or certificate, granted in any university or college or faculty after and in consequence of their having passed through a course of study and examination as thorough and sufficient as the minimum course in any like case approved by the Privy Council under section 21 of the Imperial Act, 21 and 22 Vic., Cap.90, upon proper proof.'

And under such law, no person would be entitled to recover charges for medical service unless registered. Moreover the law would punish an unregistered person who 'falsely takes any title implying a qualification to practise medicine or surgery.' The Attorney General also suggested establishing a Medical Council in order to administer the

⁸ 'Medical Practitioners to the Officer Administering the Government', dated 3 May 1882, in *HKGG*, 9 June 1883, p.464.

⁹ 'Report by the Attorney General', dated 5th May 1882, in *HKGG*, 9 June 1883, p.465.

¹⁰ The Imperial Act (21 & 22 Vic., Cap 90.) was also referred as the Medical Act 1858. According to section 31 of this Act, 'Every Person registered under this Act shall be entitled according to his Qualification...to practise Medicine or Surgery, ... in any Part of Her Majesty's Dominions, and to demand and recover in any Court of Law, with full Costs of Suit ...].

¹¹ *Ibid.*

enforcement of the law. This Council would examine the efficiency of diplomas, licence etc. subject to appeal to the Governor in Council.

After communicating with the Privy Council, the Colonial Office in London approved the Attorney General's proposal. With the introduction of the Medical Registration Ordinance No.6 of 1884, the registration and supervision system under the British Medical Act was transferred to colonial Hong Kong.

During the colonial legal transplanting process, certain modifications were often made to take into account local conditions. In this case, the most striking local condition in Hong Kong was the presence of Chinese medicine. Together with the Colonial Office's Instruction there was a Resolution from the British Medical Council, which authorised Hong Kong to establish a Local Register, but suggested that such registration 'should not in any way limit the freedom of practice of Chinese Practitioners'.¹²

Following the Home Instructions, Section 2 of the Medical Registration Ordinance No.6 of 1884 prescribed that 'This Ordinance shall not operate to limit the right of Chinese practitioners to practise medicine or surgery or to receive demand or recover reasonable charges in respect of such practice.' Chinese medical practitioners were therefore exempted from the registration requirement.

Ostensibly, the exemption from registration gave Chinese doctors more freedom than was granted to western practitioners. But in practice, this exemption put Chinese medicine in a weak and problematic position. Registration as one important means of state regulation not only ensures the quality of medical practitioners but also legitimizes certain forms of medical conduct. Without registration, as will be seen in the following sections, Chinese medicine was not entitled to enjoy various advantages and privileges offered under the colonial law of Hong Kong. On the other hand, without a proper registration system, the problem of quackery might become rampant among Chinese style medical practitioners.

These problems however were beyond the concern of the colonial government. As long as the Chinese residents of Hong Kong lived separately from the European residents, the colonial government was happy to let Chinese look after themselves according to their own medical and sanitary traditions, as were practiced at the Tung Wah hospital. The 1894 plague dramatically changed the scene and brought Chinese and western medicine into direct confrontation. As discussed in Chapter 3, had there not been the plague and its calamitous economic impact, the colonial government would probably not have bothered itself to intervene into Chinese way of life. But now the plague came, both the Tung Wah and Chinese traditional medicine became a target of European criticism.

¹² 'Resolution' passed by the Medical Council's Executive Committee on 10 November 1882, published in *HKGG*, 9 June 1883, p.466.

2. Interventionist and the Tung Wah's 1896 reforms

The controversial role of the Tung Wah Hospital had been made clear in the 1894 crisis. On one side, Chinese resorted to the Tung Wah for effective treatment in accordance with Chinese medicine. On the other side, the colonial government eagerly sought cooperation from the Tung Wah to enforce western measures against the plague. When poor Chinese resisted the government's measures against the plague, the Tung Wah's directors were required by the Governor to assist with the law's enforcement. In this awkward position, the Tung Wah attracted criticism from both sides. The Chinese community accused the hospital of betraying Chinese tradition and serving as the political tool of the colonial government, while the colonial government suspected the Tung Wah of spreading rumours and stoking anti-foreign feeling among Chinese subjects for political purposes. With the recurrence of the plague, the colonial government's determination to tarnish the Tung Wah's privilege strengthened.

2.1 *Western Critics and interference*

European criticism of the Tung Wah mainly centred around three points. First, as a hospital, it required no registration of patients, and maintained no records of the causes of deaths.¹³ Secondly, Chinese medicine was based on empirical experience rather than scientific analysis; surgery under Chinese medicine was of particular concern.¹⁴ Third, maladministration had rendered the hospital a dying house of the poor, and its filthy conditions hardly warranted it having the name 'hospital'.¹⁵ Among a number of critics, Drs. Lowson's and Atkinson's impressions of the Tung Wah were the least conciliatory. Concerning conditions at the Tung Wah, Dr Lowson said he could only describe them as little more than medical and surgical atrocities.¹⁶ The continued existence of this institution, in Lowson's opinion, was a disgrace and a serious menace to the public health of Hong Kong.¹⁷ Dr Atkinson thought the Tung Wah 'grossly mismanaged' and that much needed to be urgently improved if the Hospital wanted to avoid closure.¹⁸ All the criticism was stated as being based entirely on professional observation.¹⁹

Faced with harsh criticism from western professionals, the directors of the Tung Wah at first restrained themselves from engaging in debate with their critics. Concerning the

¹³ *The DP*, 11 May 1894.

¹⁴ 'The Tung Wah Commission Report' (hereinafter the *TWR*), 1896, pp. 8-18, 60-65.

¹⁵ See Lowson's Report, 16 May, 1894.

¹⁶ Lowson's report, 16 May 1894.

¹⁷ Lowson's report, 1 March 1895.

¹⁸ *TWR*, p. 17.

¹⁹ Lowson's report, 1 March 1895.

problem of registration of patients, for example, the Tung Wah, in fact, did maintain detailed records but the information contained there was expressed in Chinese medical terms.²⁰ The Tung Wah committee members did not defend themselves on this point. They simply employed a Chinese who had western training as a visiting surgeon to register deaths according to western criteria.²¹ Maybe the committee thought this change was not a complicated one. By adding a new registration system, the Committee hoped westerners would stop further interference in the work of the hospital.²²

Western medical professionals were not, however, satisfied with such piecemeal improvements made by the Tung Wah. When Dr Atkinson started to inspect the Tung Wah on a regular basis from April 1895 as acting Colonial Surgeon,²³ it soon became clear that he wanted completely to transform the Tung Wah into a western hospital. From building construction to sanitary installations, Atkinson put forward many proposals for improving the hospital in a westernising direction.

Like Lowson, Atkinson also had a strong sense of mission on the value of introducing western medical science to the unaware Chinese.²⁴ Some of his suggestions were reluctantly followed by the Tung Wah Hospital and some met with strong objection from the patients and Chinese doctors in the Tung Wah, such as the removal of surgical patients from the Tung Wah to the Civil Hospital.²⁵

Despite the Tung Wah's protests, Atkinson successfully transferred four cases to the Civil Hospital under the Governor's orders.²⁶ On 6 November 1895, for example, a Chinese patient was admitted to the Tung Wah with a serious wrist injury. Atkinson thought this patient should be transferred to the Civil Hospital immediately for a surgical operation. The patient strongly refused. The case was reported to the Governor and a removing order was granted.²⁷ Faced with the colonial government's continued interference, the directors of the Tung Wah could no longer stay silent. The committee decided to take legal actions.²⁸

²⁰ In the 1896 enquiry, the Tung Wah Commission found that the Hospital kept careful and precise records of patients: names, address, disease and so on. In the case of death, the information of date and hour of death, cause of death, number of grave stone ... was carefully recorded in Chinese terms. See Appendix VII, in 'The Tung Wah Report, 1896'.

²¹ 'Colonial Surgeon's Report for 1894'.

²² 'Donghua yiyuan jishi lu' 《东华医院记事录》, namely, 'The Tung Wah Hospital Records', 3 June, 1894.

²³ Sinn, 2003, p. 188.

²⁴ Ibid.

²⁵ *TWR*, p.15.

²⁶ *TWR*, p. 9; and, Sinn, 2003, p. 189.

²⁷ The patient was Chan Kan Shing admitted with a compound fracture of the left wrist and a fracture of the right fore-arm. See *TWR*, p. 9.

²⁸ Ku Fai-shan's evidence, 'TWR', pp. 25-30, 30.

2.2 *Tung Wah's fighting back*

In fighting back against this pressure, the Tung Wah committee appointed an English solicitor practicing in Hong Kong to resist the Colonial Surgeon's decisions under the Chinese Hospital Cooperation Ordinance No.3 of 1870 under which the Tung Wah was established. In the solicitor's letter addressed to the Colonial Surgeon, Atkinson was reminded that under the Ordinance No.3 of 1870, the only power given to the Colonial Surgeon was that of inspecting the Hospital.²⁹ It was the Board of Directors that enjoyed the full powers and authority to govern and decide all matters of the administration of the hospital.³⁰

Although the letter was addressed to the Colonial Surgeon only, it evidently indicated to the Governor that under the law, neither the Colonial Surgeon nor the Governor had the power to interfere with the administration of a Chinese hospital. The Tung Wah's legal action might well have surprised the Governor; it certainly caused him to realise the strong determination of the Chinese community in Hong Kong to maintain a purely Chinese medicine Hospital. The Governor kept silent and let Atkinson fight his own battle. On this occasion, the Chinese patient was not transferred to the Civil Hospital. Afterwards, and despite Atkinson's continued appeals to Governor Robinson, no further orders for removal were issued.³¹

Encouraged by the success of their legal action, the Tung Wah Hospital Committee took a further step to restore the autonomy of the Tung Wah by petitioning the Governor. In the petition, the directors objected to the presence of a European doctor in the Chinese hospital, and identified other infringements on its autonomy.³² By frankly expressing their objections, they expected, at the very least, a sympathetic compromise response from the Governor. To their frustration, the Governor delivered a disappointing speech. On 23 December 1895, Robinson met the newly elected Hospital Board, clarifying for the Board members the fact that, according to the colony's Chinese Hospital Ordinance, the establishment of the Tung Wah was subject to the Governor's approval. He was thus empowered to change the Ordinance and even to abolish the Hospital if he so chose.³³

²⁹ Article XIV of the Ordinance No. 3 of 1870.

³⁰ Article VIII of the Ordinance No.3 of 1870.

³¹ Sinn, 2003, p. 190.

³² *DP*, 24 December 1895.

³³ See *DP*, 24 December 1895; and, Huazi Ribao, 《华字日报》 24 and 25 December 1895; and, Article XVI of *The Chinese Hospital Ordinance* No.3 of 1870. Some scholars tend to think that Chinese medicine was legally allowed in the Tung Wah Hospital according to the Ordinance No.3 of 1870. For instance, Yang Xiangyin interprets the said Ordinance as 'allowing the Tung Wah to use Chinese medicine to treat indigenous Chinese people in Hong Kong.' Thus 'any attempt to introduce western medicine into the Tung Wah was contradict with the provisions'.

Up to 1895, though, no Governor had stated this power so directly to the directors of the Tung Wah. In the 1870s, when Dr Ayres had criticised the Tung Wah from a western medical perspective, he was reminded by the government that the Tung Wah was a Chinese hospital and that it was autonomous and could maintain Chinese medical practice.³⁴ Robinson was, apparently, not very keen on Chinese medicine, and, after the plague, he had acquired for himself a reputation for riding roughshod over the Chinese residents of Hong Kong.³⁵

The Governor's determination to change the hospital was strong. Robinson praised Atkinson's contributions to the Tung Wah instead of blaming Atkinson for his 'illegal interference' as the directors had wished. Robinson further confirmed that Atkinson would continue visiting the hospital and that a Chinese doctor trained in western medicine would be appointed to register deaths and to inspect treatment. This development was apparently not welcomed by the Tung Wah Committee. The Governor further reminded them that they should cooperate with the government, stop sending petitions, refrain from legal actions, and not to listen to ill-thought through advice.³⁶ Otherwise, as Robinson had himself threatened, the Tung Wah might be closed on the Governor's orders.

Faced with the Governor's bold declaration, the Tung Wah directors did not retreat. They told the Governor that they had been elected by the Chinese community, which was a community with profound reservations about western medicine. They had to consult the kaifongs in order to decide their next steps.³⁷ When Chinese elites found colonial laws could not protect their limited autonomy, they turned to the Chinese community. The Tung Wah was, after all, supported by Chinese subscriptions. If the Chinese community was as hostile

See Yang, 2007, p.253. Yang's criticism is however based on a misinterpretation of the relevant Ordinance. Article III of the Ordinance No. 3 of 1870 prescribed that the Tung Wah 'is erected for the Purpose of establishing and maintaining a Public Free Hospital for the Treatment of indigent sick among the Chinese Population ...and governed by a Board of Direction' According to this provision, Tung Wah was a free hospital for the treatment of indigenous. But this treatment was not specified to Chinese medicine. Actually, the term 'Chinese medicine' did not appear throughout the said Ordinance. Thus legally speaking, Tung Wah's application of Chinese medicine was not ensured by the said Ordinance. At best, it was an administrative arrangement made by the Board of Direction whose power was subjected to the satisfaction of the Governor. Indeed, throughout the colonial rule, Chinese medicine remained extra-legal status. Without a proper legal status of Chinese medicine, as will be seen in the following section, Tung Wah's fighting for its autonomy as a pure Chinese style hospital doomed.

³⁴ See Ayres's Report, 24 April, 1874.

³⁵ Sinn, *Power and Charity*, p.189.

³⁶ *DP*, 24 December 1895.

³⁷ Sinn, 2003, p.190. Kaifong (*jiefang* in Mandarin or Putonghua, 街坊, literally neighbourhood or local streets' association) is a term to denote the residence of a neighbourhood and their leaders. The leaders of kaifongs were self-appointed. As Lethbridge observes that 'they are civic minded, status seeking and paternalistic citizens in a particular area of the city who set themselves up to [and] voted themselves into a body'. Lethbridge, *Stability and Change*, pp.58-59.

to western medicine as the Tung Wah's directors claimed, then any action to change the management system or even to close the hospital would risk turning Chinese subjects into enemies. Even if the closure were permitted by colonial laws, the social cost of enforcing such law would be large. Governor Robinson understood well the situation.

As a result, the Governor did not compel the directors to follow his suggestions immediately. Before any actions took place, more information about the Tung Wah needed to be acquired. On 5 February 1896, a Commission was appointed by the Governor to enquire into the workings and organisation of the Tung Wah.

2.3 The 1896 Reform

The Tung Wah Commission comprised five members: James Stewart Lockhart as chairman, Paul Chater, Thomas Whitehead, Ho Kai, and A. M. Thomson. The Chairman, Lockhart, was concurrently Colonial Secretary and Registrar General. He was one of the colonial Government officials who were particularly sympathetic to the interests of the Chinese residents of Hong Kong.³⁸ Paul Chater was a prominent businessman.³⁹ Whitehead was one of the sharpest and most outspoken critics of the government.⁴⁰ Ho Kai was representative of the Chinese community. These five individuals were also Legislative Councillors. They were instructed by the Governor to investigate whether or not 'the Hospital is fulfilling the object and purpose of its Incorporation'.⁴¹

The enquiry lasted from 14 February to 2 July 1896. During this period, the Commission examined 14 witnesses and held nine meetings. As the Tung Wah staff only applied Chinese medicine at that time, one important task ought to have been an enquiry into the efficacy of Chinese medicine.

However, throughout the Commission's investigations, no Chinese doctors were invited to give evidence. Among the five invited Chinese witnesses, four were businessmen who had been directors of the Tung Wah, and one was a clerk at the Tung Wah Hospital. The questions presented to Chinese witnesses mainly concerned Chinese culture and the authority of the Tung Wah. In one instance, a Chinese witness insisted that the Tung Wah should remain a pure Chinese-style hospital because at that time, the Government Civil Hospital was already in existence and practising western medicine. That Chinese witness was reminded by the Commission that the government had no confidence in Chinese

³⁸ Karl T. Smith, 1978, p. 154.

³⁹ Paul Chater (1846-1926) was one of Hong Kong's most successful businessmen. He was elected to the Legislative Council in 1887, 1893 and again in 1899 as a unofficial legislator. He also served on the Executive Council from 1896 to 1926. See G.B. Endacott, *Government and People in Hong Kong*, Hong Kong: Hong Kong University Press, 1964, p. 103, fn 1.

⁴⁰ Sinn, 2003, p. 196.

⁴¹ HKGG, 5 December 1896, p. 1147, Appendix 1, Commission by his Excellency the Governor.

medicine, nor in the 'Chinese way' of registering deaths.⁴² This reminder impeded any debate on the efficacy of Chinese medicine.

In contrast, among the nine European witnesses, seven were medical professionals, at least five of whom were senior medical officers. These western medical professionals all harshly criticised the Tung Wah's Chinese-style of medical and surgical treatment.

Without any Chinese doctors being invited to give evidence, the Tung Wah Commission stood little chance of being informed about the efficacy or the dangers of Chinese treatments as alleged by western medical professionals. In other words, for the Tung Wah Commission, the inferior nature of Chinese medicine was a self-evident 'truth' rather than a debatable proposition.

Based on this investigation, on 17 October 1896 three reports were submitted: a majority report jointly authored by Lockhart, Thomson and Ho Kai, another by Chater, and one by Whitehead. The majority of the Commission, it turned out, was in favour of keeping the Tung Wah. Some technical improvements were recommended, such as the appointment of a Chinese trained in western medical science to reside in the hospital and of a Chinese of good standing to be a steward of the hospital. These new arrangements sought not to challenge the authority of the Hospital Committee, nor to threaten or alter the hospital's Chinese medical practice.

While agreeing with many opinions in the majority report, Mr Chater thought there was one very important omission. He found it unacceptable to allow unscientific Chinese medical treatment at the hands of doctors who in his view were without proper qualification or surgical knowledge. Chater recommended that there should be, among the doctors of the hospital, 'at least one Chinaman who has received training in Western schools, not merely to serve as a registrar and interpreter, but who would make it his business to *quietly* and *gradually* introduce western medicine systems'.⁴³

Whitehead, the most outspoken critic of the government, submitted a report very different to the others. In Whitehead's opinion, the Tung Wah had only excelled as a 'Poor House and Refuge for sick and destitute Chinese', but had not functioned, 'in any proper sense according to European ideas, [as] a Hospital'.⁴⁴ Due to the government's 'laissez-faire' policies, the Tung Wah had been empowered so that it 'steadily blocked the way to the gradual and judicious introduction of modern methods of medical and surgical treatment'. Therefore, Whitehead strongly recommended restoring governmental supervision over the Tung Wah.

⁴² *TWR*, pp.36-37.

⁴³ *Ibid* [emphasis added].

⁴⁴ Whitehead's report, 17 October 1896, p. xxi.

After careful consideration of the reports, Governor Robinson drew up his own reform proposal. In rethinking the Tung Wah's role and place in Hong Kong, he advocated three major reforms namely, the appointment of a steward of the hospital's sanitation, a Chinese doctor with western medical training and a visiting surgeon.⁴⁵ After negotiation with Tung Wah's directors, the Governor made some concessions, declaring that the colonial government would pay the Chinese doctor's salary and forego the appointment of the steward. The governor's proposals along with his concessions allowed the directors to persuade the kaifongs or local community leaders to accept the reform.

As the result, Dr Chung Boon-chor (Zhong Benchu, 钟本初), a house surgeon at Alice Memorial Hospital, was appointed as resident surgeon at the Tung Wah.⁴⁶ Dr Thomson was appointed as visiting surgeon. One year later, a Chinese steward was appointed to supervise the Tung Wah's sanitation.⁴⁷ The Chinese hospital offering purely Chinese treatment was no more.

Though the reform of 1896 was ostensibly medical in nature, it had far-reaching socio-political ramifications.⁴⁸ Before the reform, the Tung Wah was a potent symbol, an undiluted Chinese institution offering public services along traditional lines. The end of the Tung Wah's autonomy indicated the inability of local Chinese leaders to protect fully Chinese ways of life in the British colony. With the passing of the Tung Wah's independence, the power of local the Chinese community to resist 'western' style public health also declined.

From the government's standpoint, the Tung Wah's prejudice against western medicine had played an important role in obstructing the legal transplantation of British public health knowledge and standards to the colony. The plague was an opportune moment for the colonial government to intervene in the Tung Wah and to implement policies that would lead to a progressively more westernised public health system supported by colonial law.

3. Exclusion as oppression

As in the case of space controls, the medical dimension of Hong Kong's public health law experienced rapid development in the early twentieth century. Various ordinances were introduced, often being transplants from Great Britain, to regulate different medical professions: for example, pharmacy (The Pharmacy Ordinance No. 12 of 1908), midwifery

⁴⁵ *CM*, 2 December 1896.

⁴⁶ Dr Chung Boon-chor received \$150 from the colonial government for his duties at the Tung Wah. See Robinson to Chamberlain, 29 December 1896, no. 294, CO129/273.

⁴⁷ Thomson, 'Quarterly report of the Tung Wa Hospital', 1 October to 31 December 1897, enclosed in Black to Chamberlain, 18 February 1898, no. 47, CO129/281.

⁴⁸ Sinn, *Power and Charity*, pp. 206-207.

(The Midwives Ordinance No. 22 of 1910), dentistry (The Dentistry Ordinance No. 16 of 1914), nursing (The Nurse Registration Ordinance No. 1 of 1931), and general medical practice (The Medical Registration Amendment Ordinances No.1 of 1897, No.31 of 1914, and so on). During this professionalisation process, however, Chinese medicine was further marginalized. Medical laws which were not intended to interfere with the freedom of Chinese style medical practitioners nevertheless gradually became a powerful force for marginalizing, restricting and even replacing Chinese medicine.

3.1 Chinese medicine's extra-legal status under Hong Kong's normative framework

As mentioned above, under section 2 of Ordinance No.6 of 1884, Chinese medical practitioners were exempt from registering. This exemption deprived Chinese medical practitioners of the privileges that came from being 'registered', 'legally qualified' or 'duly qualified' medical practitioners,⁴⁹ as well as putting Chinese-style doctors in an ambiguous position where they had neither a proper legal status nor a status considered to be unlawful. In a word, Chinese medicine and its medical practitioners were excluded by the normative medical framework under the colonial rule.

The Medical Registration Ordinance 1884 described the basic legal position on the status of Chinese medicine, which was to exempt Chinese style doctors from a requirement to register under the said Ordinance. The subsequent medical laws followed this approach of neglecting the topic of Chinese medicine. For instance, the Midwives Ordinance No. 22 of 1910 prescribed that only western-style midwives were eligible to apply for a certificate and to be admitted into the roll of midwives (section 3); Chinese traditional midwives, 'Wan Po' (Wenpo, 稳婆), could continue their practice on condition of not using the title or name in English or any expression implying that they were 'certified midwives' (section 13, as amended by Ordinance No. 12 of 1926).

When the Dentist Ordinance No. 16 of 1914 was in preparation, it originally suggested that the proposed dentistry ordinance was inapplicable to the Chinese community (section 4 of the Bill for the Dentistry Ordinance, 1914). However, section 4 was struck out in the final version of Ordinance No. 16 of 1914. The deliberate omission of the status of Chinese-style dentists underlines the colonial government's reluctance to grant Chinese medicine an explicit legal status.⁵⁰

⁴⁹ Under section 8 of the Medical Registration Ordinance, No. 6 of 1884 the terms 'legally qualified Medical Practitioner', 'duly qualified Medical Practitioner' and 'registered persons' were interchangeable.

⁵⁰ From the point-of-view of legal transplanting, the ineligibility of Chinese-style doctors to apply for certificates as registered medical practitioners, qualified midwives and dentists is somewhat understandable, as medical laws transplanted from Britain were based on western medical theory and standards. The difficulties in applying such an alien law in the local society must

Being excluded from but not forbidden by the law, Chinese medicine at best enjoyed an ambiguous legal status in colonial Hong Kong. As will be seen in the following subsection, this non-legal status put Chinese medicine in a rather weak position in relation to western medicine.

3.2 Normative restrictions on Chinese medicine

Although it has been widely noticed that the relationship between Chinese and western medical cultures in the colony was unequal, not many scholars realize that the inferior status of Chinese medicine was ‘created’ and ‘supported’ by colonial medical laws. From a legal perspective, it is not difficult to uncover the restrictions imposed on Chinese medicine. Many medical laws clearly indicated that certain tasks could only be carried out by ‘legally qualified medical practitioners’ or ‘registered persons’ who were educated or trained under western medicine. Based on a preliminary survey of Hong Kong’s various medical laws, this study finds Chinese medicine was limited in at least three respects, as will be considered below.

The restricted scope of medical treatment

Chinese medicine was prevented by some medical laws and bye-laws from being used for treating certain diseases. Among the restricted diseases, infectious diseases might well have been the most controversial. During the time of the plague, the Sanitary Board made some sanitary bye-laws which empowered legally registered western-style medical

have been tremendous, if not insurmountable. For instance, individuals sitting on the Medical Board, Midwives Board or Dentist Board were all trained under European methods without any knowledge of Chinese medicine. How could such people, with no knowledge of Chinese medicine, administer and ensure the quality of Chinese medical practitioners? In addition to this administrative difficulty, at the time Chinese medicine *per se* had problems. As has often been emphasised by western medical practitioners, Chinese medicine lacked education and qualification systems comparable to its western counterpart. However, these difficulties were not entirely insurmountable. Popular Chinese medicine did lack a proper system for training, but on the scholarly and official level, Chinese medicine had a long tradition of formal education and qualification. Xianzhong Hao, ‘Jindai zhongyi cunfei zhizheng yanjiu’ (*On the Abolishment and Preservation of Modern Chinese Medicine*), Ph.D. diss., Department of History, East China Normal University, 2005, pp.34, 37-38. In addition, the Tung Wah Hospital had attempted to formalise Chinese medicine as early as the 1870s. In this way, the colonial government could not say that it lacked the resources to understand and formally administer Chinese medicine had it decided to recognise this form of medicine.

practitioners to examine individuals suspected of suffering from ‘bubonic plague, cholera, small-pox ... or contagious disease as may be from time to time duly notified in the Government Gazette.’⁵¹ These restrictive bye-laws were later absorbed by the Public Health and Buildings Ordinance No. 1 of 1903.⁵² Chinese-style doctors were presumably not allowed to treat the ‘contagious diseases as may be from time to time duly notified by the Government Gazette.’ Indeed, Chinese doctors in the Tung Wah Hospital were from time to time notified by the medical officers that they were not to treat certain contagious diseases.

Apart from infectious diseases, Chinese-style doctors were also prevented from treating midwifery cases (the Midwives Ordinance 1910 and its amendments), dentistry cases (the Dentistry Ordinance 1914 and the Registry of Dentists Ordinance 1940) and eye disease, to name only a few.⁵³

Similar restrictions were placed on Chinese medication. For instance, under the poison bye-laws, only ‘legally qualified’, western-style medical practitioners, chemists and druggists were entitled to sell medicines containing certain kinds of poison.⁵⁴ Some of these poisons were also used in Chinese medicine to treat certain diseases. From a strictly legal point-of-view, Chinese-style doctors and pharmacists had no right to sell or prescribe medicines containing the poisons listed in the laws.⁵⁵ Certain types of Chinese medication therefore always potentially faced legal challenge. However, it was not until the late 1950s that use of some Chinese herbs was first prosecuted. Section 5.5 of this Chapter below will discuss these belated prosecutions from a social-cultural perspective.

The limited role of Chinese medicine in the public sphere

Without a clear legal status, Chinese medical practitioners were denied certain privileges enjoyed by registered, western-style doctors. For instance, Chinese medical

⁵¹ Bye-law 17 prescribed that ‘All persons knowing or having reason to believe that any person has been attacked by, or is suffering from, bubonic plague ... or contagious disease as may be from time to time duly notified in the Government Gazette, shall notify ...[the officer] ...and ...[the] officer ...shall notify ... the medical officer of health, and may detain such person or remove him to a public hospital until he can be examined by the medical officer of health or by some legally qualified and registered medical practitioner [underline added].’ See byelaws made under section 13 of Ordinance No. 15 of 1894, published in the *HKGG*, 22 May 1897, pp. 364-367.

⁵² See Schedule B, Byelaws of ‘Notification of Infectious Diseases’.

⁵³ Section 5.5 of this Chapter will elaborate in some detail of the prevention of Chinese-style doctors to treat certain diseases and Chinese protests against such restriction.

⁵⁴ Bye-laws made under sub-section 22 of section 13 of the Public Health Ordinance No. 24 of 1887, for regulating the sale of poisons in the colony of Hong Kong, made by the Sanitary Board on 25 August 1898, published in the *HHGZ*, 17 September 1898, pp. 917-918.

⁵⁵ The poisons listed in the above byelaws included arsenic, almond, morphine, orpiment For a full list please see Parts I and II attached to the above byelaws. These byelaws, made under section 13 of Ordinance No. 24 of 1887, were later consolidated by the Pharmacy Ordinance 1908 and the Pharmacy and Poison Ordinances 1916 and 1936.

practitioners were not permitted to issue death certificates (section 12 of the Births and Deaths Registration Ordinance No. 16 of 1896), certificates concerning infectious diseases (section 84 of the Public Health and Buildings Ordinance No.1 of 1903), orders removing patients suffering from infectious diseases to designated places (section 29 of Public Health Ordinance, 1887) or even certificates indicating buildings unfit for human habitation (sanitary bye-laws made under section 13 of the Closed Houses and Insanitary Dwellings Ordinance No. 15 of 1894).

The participation of Chinese medical practitioners in public affairs was also limited. Some scholars have noted that no Chinese-style doctors were appointed as government medical officers. In the formulation of public health policies, Chinese medical practitioners' opinions were rarely sought by the government.⁵⁶ The Hong Kong College of Medicine for Chinese was established in 1887 but only taught western medicine and there were no formal medical schools or institutions to teach Chinese medicine established in the colony.

By restricting the role of Chinese medicine in the public sphere, the colonial government ensured that western medicine had the greatest influence on the transformation of Hong Kong's public health and relevant social institutions.

Limited chances for Chinese medicine to develop

As mentioned above, under section 2 of the Medical Registration Ordinance No. 6 of 1884, Chinese medical practitioners were exempted from the obligation to register. This exemption was later revised as follows:

Nothing in this Ordinance shall be deemed to affect the right of any Chinese person to practise medicine or surgery according to purely Chinese methods and to demand and recover reasonable charges in respect of such practice: provided that such person does not take or use any name title or addition calculated to induce any one to believe that he is qualified to practise medicine or surgery according to modern scientific methods [*italics added*] (section3(1) of the Medical Registration Ordinance, 1884, as amended by Ordinance No.31 of 1914.

The key point here is the term 'purely Chinese medicine'. What is 'purely Chinese medicine'? A medical system is a living system, constantly evolving and developing in relation to other medical and even non-medical systems. In order to make Chinese medicine 'pure' enough to be distinguished from western medicine, steps would have to be taken to 'protect' Chinese medicine from being sullied by other medical systems. In the 1970s, Marjorie Topley, a medical anthropologist, observed that in Hong Kong '[n]o herbalist may do anything restricted as a privilege to qualified registrable Western-trained doctors or

⁵⁶ Lee, 1978, pp.292-293.

auxiliaries. Thus he may not ... use drugs on the Part I list of the Pharmacy and Poisons Ordinance; use antibiotics He may not perform western-type surgery or use X-ray equipment...'.⁵⁷ As might be imagined, the condition of 'according to purely Chinese medicine' unavoidably had the effect of ossifying Chinese medicine. However, in conjunction with the government's non-interference policy, this petrification worked subtly, hardly perceivable by the Chinese community of the time.

Thus far, the normative colonial framework devised for Chinese medicine has been scrutinised. With the Medical Registration Ordinance at its centre, surrounded by other ordinances and bye-laws, colonial public health law constructed a network whereby Chinese medicine was systematically excluded from the normative medical framework. Based upon the above investigations, and from a legal perspective, we can safely infer that to a large extent the inferior status of Chinese medicine was created and supported by colonial medical laws.

Some might insist that the 'backward' nature of Chinese medicine deserved such normative ossification, accelerating its replacement by more 'advanced' western medicine. In other words, the replacement of Chinese medicine by western medicine in colonial Hong Kong would be the result of a normal development process. During this process of 'natural selection', colonial medical laws played the role of catalyst. This study, however, argues that medical laws, based on the presumption of western cultural superiority, played a leading role in marginalising and suppressing Chinese traditional medicine. As will be seen, controversies surrounding the Tung Wah's 1938 reform in my view confirm this argument.

4. The Tung Wah's westernisation

The Tung Wah's adoption of western medicine was often seen by European colonists as evidence supporting the 'superiority' of western medicine. Whether or not the Tung Wah's westernisation was the result of the 'superiority' of western medicine is an issue that we need to investigate from both Chinese and western perspectives.

4.1 A mixed-style Tung Wah, 1897-1937⁵⁸

⁵⁷ Marjorie Topley, 'Chinese Traditional Etiology and Methods of Cure in Hong Kong', in C. Leslie ed., *Asian Medical Systems: A Comparative Study*. Berkeley: University of California Press, 1976, p.113.

⁵⁸ During the period considered here, the Tung Wah Hospital established several branch hospitals: the Tung Wah infectious diseases hospital (1900-1938), the Kwong Wah Hospital (1911) and the Tung Wah Eastern Hospital (1929, hereafter TWEH). In 1938, Tung Wah returned the smallpox hospitals to the colonial government, marking an end to Tung Wah's efforts in fighting infectious disease. It was not until 1971 that Tung Wah got its formal name of Tung Wah Group of Hospitals, under the Tung Wah Group of Hospitals Ordinance 1971. In Chinese, Tung Wah continued to be called Tung Wah Three Hospitals (*donghua sanyuan*). For brevity's sake, this study uses 'the Tung Wah Hospitals' to refer to the Tung Wah Three Hospitals or the

After western medicine was introduced into the Tung Wah Hospital in 1897, it developed quickly and was practised in parallel with Chinese medicine in the Hospital(s).⁵⁹ While colonial medical officers appeared relaxed about progress made at the Tung Wah Hospital, the Chinese community was not satisfied with the aggressive advance of western medicine. Under the medical officer's close supervision, many Chinese treatments and sanitary methods were eliminated or altered in accordance with western standards, examples being the removal of sandal-wood burners and replacing quilts with blankets as bedding.⁶⁰

As colonial subjects, the ways of the Chinese in public health were meant to be 'improved' in accordance with European standards. Yet many Chinese-style medical practitioners felt uneasy with western-style supervision.⁶¹ When the Kwong Wah Hospital was in preparation, Chinese promoters requested that the government not extend the inspection regime to the new branch hospital. Ho Kai pointed out in the Legislative Council that the Chinese community wanted a freer hand over Kwong Wah's administration.⁶²

However, Chinese dislike of the aggressive expansion of western medicine did not mean that Hong Kong's Chinese residents resisted western medicine altogether. On the contrary, members of the Chinese elite in the early twentieth century colonial Hong Kong had been enthusiastic in assisting the colonial government to promote western medicine

Tung Wah Group of Hospitals. The term 'Tung Wah' refers either the old Tung Wah Hospital or the Tung Wah Group of Hospitals, depending on context.

⁵⁹ In 1897 only 13% of inpatients were treated under western methods (IMOR, 1897). Five years later, the proportion of Chinese inpatients under western treatment had increased to 48% (IMOR, 1903). The statistics in Table 8.1 shows that from 1915, the number of inpatients under western treatment was greater than those under Chinese treatment.

⁶⁰ The burning of sandal-wood has special significance in Chinese medicine. When burnt, it emits a fragrant smell with an effect similar to ataractic but with little noxious by-product. Europeans found sandal-wood smoke suffocating, believed that it was used to cover foul odours and thought it made hospital ventilation worse. Without a Chinese medical background, Europeans could not understand and appreciate sandal-wood's significance. In addition, the medical officer required the Tung Wah to change all cotton quilts for blankets according to western sanitary practice. The Board of Directors objected unanimously, insisting 'the Chinese, rich and poor alike, are so accustomed to this form of bedding [quilt] that it would materially take away from the comfort of the patients to introduce any other.' In the face of strong objections, the medical officer acknowledged that the change to blankets was not an essential sanitary matter, but he still insisted that blankets were better than quilts and planned to introduce blankets sometime later. 'Report of the Inspecting Medical Officer of the Tung Wah Hospital' (hereinafter IMOR), Enclosure IV to the *Principal Civil Medical Officer Report for the year 1897*, p.410. Other examples abound whose inclusion limited space does not allow. Suffice it to say that frictions emerged as the result of the close supervision of the hospital.

⁶¹ The Inspecting Medical Officer noticed that 'violent jealousies' existed against the introduction of western medicine, especially among native doctors' in Tung Wah Hospital, IMOR, 1902, pp.272-273.

⁶² HKH, 1 September 1910, p.84. But from 1919 onwards, a visiting medical officer was appointed to inspect Kwong Wah and from then on, Kwong Wah quickly developed towards a western style Hospital. See the reports of the Visiting Medical Officer of the Kwong Wah Hospital, 1919-1922.

among Chinese community. But this local Chinese welcome of western medicine was based on the (unspoken) premise of preserving Chinese traditional medicine, not using it to replace Chinese medicine. A certain degree of autonomy was necessarily for the Tung Wah Committee over the running of its Chinese hospitals.⁶³ Therefore, the Chinese community asked for a freer hand over the more recently established Kwong Wah hospital. Based on this autonomy, the Tung Wah Committee would start a process which might be described as 'selective westernisation'.⁶⁴ The Directors were seen ardently to be assisting the promotion of western medicine at the Tung Wah.⁶⁵ They did also try at the same time to support and prevent Chinese medicine from being marginalised.⁶⁶

This object of a combined hospital was however different from European colonists' object, whose aim was to fully westernise the Tung Wah Hospitals and to replace 'dangerous and backward' Chinese traditional medicine by 'advanced and scientific' Western medicine. Due to these differing aims, throughout the Tung Wah's westernization process, co-operation and conflict co-existed in the relationship between the colonial government and the Board of Directors. This struggle extended far beyond the medical dimension and was closely connected to economic, political and cultural factors.

4.2 Statistics tell only part of the story

In Hong Kong, the colonial medical authorities often cited supportive statistics, particularly of the higher proportion of Chinese patients admitted in the Chinese hospitals under western treatment, to indicate that more and more Chinese accepted the 'superiority' of western medicine.⁶⁷ However, a closer examination finds that the statistics lend more support to the key argument of this Chapter, namely that the colonial medical normative framework played a vital role in marginalising Chinese medicine in Hong Kong.

⁶³ By the time 1929, the Tung Wah had established several branch hospitals. For a brief introduction the Tung Wah's expansion see note 58 above.

⁶⁴ Tung Wah Directors' intention for a combined Chinese-western style hospital can be seen from the scroll presented by the founder-directors of the Kwong Wah Hospital. That scroll reads that 'he zhongwai liangyi miaoyao zhang jun foshou zheng ershiji shijie chenke' (合中外良医妙药仗君佛手拯二十纪世界沉痾 'Lift thy kind miraculous hands to cure mankind of all the dreadful diseases with the combined treatment of Western and Chinese medicines in the 20th Century'), in *One Hundred Years of the Tung Wah Hospital 1870-1970*, p.63.

⁶⁵ The Tung Wah Directors were sometimes praised by medical officers in medical reports, stating that without the Directors' cooperation, many reforms would have been impossible to carry out, see IMOR, 1897, 1899, 1903; the Report by the Visiting Medical Officer to Kwong Wah Hospital for 1919. Dr Wellington, the Director of Medical and Sanitary Services (1929-1936) frankly acknowledged that it was because of the vigorous cooperation of leading Chinese that government medical propaganda started to have a more success in the Chinese community, see *Medical and Sanitary Report for the year 1932*, paragraph 24.

⁶⁶ As discussed below, Tung Wah Directors subscribed generously to ensure free provision of Chinese medicine to poor Chinese.

⁶⁷ Say for instance, *the Medical and Sanitary Report for the year 1934*, paragraph 353.

The data in Tables 6.1, 6.2a-b and 6.3a-b (attached in the end of this chapter) are mainly based on various government medical reports on the Tung Wah Three Hospitals from 1897 to 1938. Some of the data are from the Tung Wah's Chinese language archives. Three propositions derive from the data in the Tables. First, after 1919 western medicine dominated the treatment of patients in the inpatient department in the Tung Wah Hospitals. Second, Chinese medicine dominated the outpatients work, except during the period 1915–1921, in the Kwong Wah Hospital. Third, the overall number of patients seeking Chinese medical treatment was greater than the sum of those patients seeking western treatment, especially as there was a larger absolute number of outpatients.

As mentioned above that under colonial medical laws, Chinese-style medical practitioners were not allowed to treat patients of infectious disease, diseases of the eye or those seeking midwifery services. Chinese doctors in the Tung Wah Hospital were often 'reminded' by the inspecting medical officers not to treat certain patients especially those with infectious disease.⁶⁸ One extreme example was the 1938 notification issued by the Medical Committee to the Tung Wah Hospitals. That notification listed 17 infectious diseases which Chinese doctors could not treat.⁶⁹ Subsequent to this development, Chinese doctors in the Tung Wah Hospital found they had virtually 'no patients' to treat.⁷⁰

In addition to these restrictions, the space allocated to Chinese medicine within the Tung Wah Hospitals was also constantly changed by medial authorities. For instance, the number of beds reserved for Chinese medical wards was reduced annually. Upon its inauguration in 1911, the Kwong Wah Hospital provided 72 beds altogether, among which more than 40 beds were reserved for Chinese medicine. Later, under the instruction of medical officers, the beds for Chinese medicine were reduced to around 30.⁷¹ Due to

⁶⁸ Tung Wah dongshiju huiyi jilu (minutes of meetings of the Tung Wah Hospital Directors' Board Committee), 2 April 1939. Part of this Chinese meeting records is reproduced in Ho Puiyin, *Po yu Li: Donghua sanyuan zhidu de yanbian (Deconstruction and Reconstruction: the development of the Tung Wah Three Hospitals)*, Vol.4, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2010, pp.70-71. The Tung Wah Hospital was Hong Kong's first pure Chinese style hospital. It was established in 1870 as a result of the I Ts'z scandal which disclosed Chinese miserable sanitary and medical conditions suffered. In accommodating Chinese prejudice against western medicine, a Chinese style hospital, viz. the Tung Wah was established. Once it came into being, the Tung Wah soon developed into a prominent Chinese voluntary association and acted as a royal guardian of Chinese traditional medicine. For an excellent work on this Chinese hospital of the Tung Wah, see Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*, Hong Kong University Press, 2003, especially Chapters 2, 5 and 6.

⁶⁹ Minutes of the Meetings of the Board of Directors, the Tung Wah Hospitals, dated 20 December 1938 and 15 March 1939.

⁷⁰ Tung Wah dongshiju huiyi jilu (Minutes of Meetings of the Tung Wah Hospital Directors' Board Committee), 7 June 1939, reproduced in Ho, *Po yu Li*, 2010, pp.74-76.

⁷¹ The visiting medical officer found Chinese medical wards were too crowded and had poor ventilation as a result, suggesting the reduction of the number of beds in Chinese wards. This

shortages of beds, it was not uncommon for several patients to occupy one bed in Chinese medical wards. This, as medical officers complained, constituted an 'extremely undesirable feature' of the Chinese hospital. Instead of enlarging the space of Chinese medical wards, though, the medical officers demanded that Chinese doctors 'limit admissions to the lying-in wards to the extent of one patient per bed'.⁷²

As a result, many patients were advised by Chinese doctors to consult the outpatient department instead. After the issuing of the notification of 17 infectious diseases in 1938, Chinese-style doctors had very few patients to treat. From 1938 onwards, the beds in Chinese medical wards were often vacant. In contrast, western medical wards were overcrowded. This gave the medical authority another excuse to reduce further the number of beds in Chinese wards.⁷³

Restricted by limitations on which diseases could be treated and by space, the number of inpatients treated in the Tung Wah by Chinese medicine fell considerably. But the medical authority interpreted this reduction as being the result of the 'superiority' of western medicine,

The trend in the Chinese hospitals in Hong Kong is definitely towards the acceptance by a discerning public of Western rather than Eastern medicine. This is typified in the increasing number of even poor, illiterate persons who are willing to receive treatment from properly registered medical practitioners instead of from herbalists.⁷⁴

However, this official assessment could not explain the popularity in outpatient department of Chinese medicine. The data in Tables 6.1, 6.2a-b and 6.3a-b show that, whenever the proportion of Chinese medical inpatients decreased, the corresponding outpatient proportion increased. This implies that, despite various restrictions upon Chinese medicine, the overall number of patients seeking Chinese medicine might not have decreased at all. Instead patients were simply transferred from inpatient wards to outpatient wards.

In 1922, an anonymous Chinese lady donated all her savings to the Kwong Wah, enabling it to offer the free provision of Chinese medicine.⁷⁵ Together with the money, this

led to more Chinese patients sleeping in the corridors due to the shortage of beds. See Letter from Kwong Wah to Tung Wah Hospital, 26 December 1926: complaints from Chinese doctors on staff at Kwong Wah concerning the suppression of Chinese medicine. In the volume of *Inbound Letter from different places 1926-1927*. A copy of this letter is reproduced in Ho, *Po yu Li*, 2010, pp.24-25.

⁷² *Medical Sanitary Report for the year 1938*, p.45.

⁷³ Minutes of the Meetings of the Board of Directors, the Tung Wah Hospitals, dated 13 August 1939 and 19 March 1939.

⁷⁴ *Medical & Sanitary Report for the Year 1939*, p.45.

⁷⁵ Altogether, the anonymous benefactor donated \$50,580. At the time, with commodity prices low, an entire newly built building cost several thousand dollars, *Hong Kong: Benevolent City*, 2010, p.55. In the early 1920s, the colonial government's annual subsidy to Kwong Wah was no more than \$35,000 per year. Puiyin Ho, *Yuan yu Liu: Dongwa yiyuan de chuangli yu yanjin*

lady also wrote a letter urging affluent Chinese in Hong Kong to donate more money to enable Kwong Wah Hospital to provide free Chinese medicine.⁷⁶ The action of this anonymous donation reminded the Tung Wah's Directors that the Chinese community, especially working-class and poor Chinese, was still in need of Chinese medicine. Encouraged by this anonymous lady's generosity and determination, members of Hong Kong's Chinese elite responded. In just a few days more than \$120,000 was raised. A fund was subsequently set up to support free Chinese medication.⁷⁷ In addition to this original fund, in the period 1923–1935 Kwong Wah annually received around \$12,000 from Chinese subscriptions for the free provision of Chinese medication.⁷⁸

The number of Chinese outpatients seeking Chinese medical treatment accordingly increased, quickly exceeding the number under western treatment. As shown in Table 8.2b, in 1921 the number of Chinese outpatients seeking western medicine was 26,291, while it was only 7,869 seeking Chinese treatment. After 1922, the year Chinese medication began to be offered free of charges, tens of thousands of poor Chinese went to the Chinese outpatient departments. After 1923, the relationship between Chinese and western medicine remained constant, with the former two or three times bigger than the latter.

It would be specious to suppose that the Chinese preference for Chinese medicine was based on pride and prejudice against western medicine. For poor Chinese, two main factors influenced their behaviour in choosing medicine: cost and effect. When both medicines were free, people chose medicine according to their trusted experience. The perceived efficacy of Chinese medicine must have played an important role in explaining the high proportion of outpatients seeking Chinese medicine. Generous subscriptions from well-off members of the Chinese community in Hong Kong and the adamant usage of free Chinese medicine by poor Chinese both indicate that, given the same financial support, Chinese medicine developed as quickly as western medicine in colonial Hong Kong. It stands to reason that, if financial support for Chinese medicine faltered, Chinese medicine might be expelled from the Tung Wah Hospital. Unfortunately, this turn of events soon came about.

4.3 A 'pure' western-style hospital: the Tung Wah's 1938 reform

(Source and Stream: the establishment and evolvement of the Tung Wah Hospital), Vol. 1, Xianggang: Sanlian shudian (Xianggang) youxian gongsi, 2009, p.309.

⁷⁶ In that letter, the Chinese lady described the miserable living conditions of poor Chinese, afflicted with diseases but without the money to buy medicine to treat their illnesses. See Letter from an Anonymous Chinese lady to the Tung Wah Directors, dated 10 June 1922. A copy of this letter is reproduced in Ho, *Yuan yu Liu*, 2009, pp. 313-314.

⁷⁷ Out of the fund, \$60,000 was taken to acquire 10 shops at 202-220 Reclamation Street in Yaumatei to generate rental income. The remainder of the fund was deposited in banks to generate interest. The rent and interest generated allowed for the provision of free Chinese medication to the public, *Hong Kong: Benevolent City*, 2010, p.55.

⁷⁸ Ho, *Yuan yu Liu*, 2009, p.309.

Influenced by the depression of the 1930s, the Tung Wah Hospital could not generate enough subscription revenue from the Chinese community. For the first time in the Tung Wah's history, the Board of Directors approached the colonial government for financial support, asking for a grant of \$5,000 to cover its 1934 deficit. The colonial government was reluctant to grant the money to the Tung Wah Hospitals.⁷⁹ After discussion with the Directors, the colonial government soon came to realise that the Tung Wah Hospitals formed a crucial part of the colony's medical service. If the Tung Wah became insolvent, the government would have to take over the hospitals, and the additional burden would be very heavy.⁸⁰

Compared with other colonies in 'the tropics', the colonial government of Hong Kong invested far less money in medical services than it might be thought, largely owing to the generous nature of the colony's Chinese residents' voluntary contributions.⁸¹ Under these circumstances, the Colonial Office in London considered the colonial government to have 'a clear obligation to come to the help of the Chinese hospitals to a greater extent than hitherto'.⁸² However, when the Tung Wah Committee asked for financial support in the following years, 1936 and 1937, the Colonial Office became impatient and attributed the Tung Wah's financial problems to the inefficiency and impotence of the Board of Directors. The colonial government was instructed to 'take over the Tung Wah if necessarily, even at the increased cost to the Government'.⁸³

The colonial government prepared to take advantage of the Tung Wah's financial difficulties to take immediate actions so as to enhance its control and cut down the power of the Chinese Board of Directors.⁸⁴ A proposal was carefully prepared by the colonial government with advice from the Financial Secretary, the Secretary for Chinese Affairs and the Director of Medical Services.⁸⁵ In June 1938, the Tung Wah Committee was informed that the government was willing to grant the Hospital a sum of \$150,000, subject to seven conditions. However, these were very stringent conditions, which meant that if accepted by

⁷⁹ *Donghua Sanyuan Bainian Shilue*, vol. 2, 1971, p. 73.

⁸⁰ Peel to Cunliffe-Lister, 30 January 1935, enclosed in CO129/553/2, pp.13-15.

⁸¹ In the 1930s, the government hospitals, including the mental hospital and infectious disease hospital, altogether provided 343 beds. Tung Wah and its associated Chinese hospitals provided 1084 beds, [The Colonial Officer's note on the capacity of Hong Kong's hospitalisation], 15 February 1935, CO129/553/2, p.2.

⁸² [The Colonial Officer's discussion on the grant to the Tung Wah], 15 February 1935, CO129/553/2, pp.3-4.

⁸³ [The Colonial Office's comments on the Tung Wah's financial condition], 22 September 1937, CO129/561/1, p. 2.

⁸⁴ From the Acting Governor N. L. Smith to The Right Honourable W. G. A. Ormsby-Core, 9 September 1937, CO129/561/1, pp.8-10.

⁸⁵ From the Governor Northcote to the Secretary of State MacDonnell, 17 August 1938, CO129/567/6, p.21.

the Directors, both the Tung Wah's medical and financial administration would be effectively placed under government control (conditions 1-4 and 7) and Chinese medicine would be completely abolished (condition 5).

In brief, the seven conditions were as follows. First, an auditor approved by Government shall audit the Tung Wah's annual accounts. Secondly, the Tung Wah's annual budget shall be approved by the Permanent Advisory Committee. Thirdly, the medical and charitable work of the Tung Wah shall be separated as completely as possible. Fourthly, medical work of the Tung Wah shall be under the control of a Medical Committee consisting of three representatives of the Tung Wah Committee, two representatives of the Medical Department (including the Director of Medical Services who shall preside) and the Medical Superintendents of the three hospitals. Fifthly, the gradual abolition of Chinese treatment for medical inpatients shall be aimed at. In particular, Chinese medicine shall be provided only in a limited number of wards in the Tung Wah and Kwong Wah Hospitals and only to be offered to those in-patients who spontaneously asked for it. Sixthly, future investment of the Tung Wah's funds shall be in gilt-edged securities instead of mortgages and property. Finally, the government shall have power to make any investigation at any time into Tung Wah's administration, either financial or medical.⁸⁶

Meanwhile, the colonial government emphasised that the voluntary nature of the hospitals would be maintained and hoped that under these new arrangements the members of the colony's Chinese community would increase their confidence in the Tung Wah and make even greater financial contributions.⁸⁷ Under these new arrangements, Chinese residents' money would be secured, but this time, the Chinese money would be used to support western medicine. The colonial government hoped the Tung Wah Hospitals would accept these conditions in toto. Well aware of the 'drastic' nature of these proposed changes, the Governor did not press the Tung Wah authorities for an immediate decision, waiting instead until the committee had fully consulted the hospitals' Advisory Board.⁸⁸

The Tung Wah Committee was quite irritated by the stringent conditions proposed by the colonial government. Except for unanimous agreement with the sixth condition concerning the Tung Wah's investments, the Committee opposed or sought to modify all the

⁸⁶ For details of these seven conditions, please see the Letter from the Secretary of Chinese Affairs to the Tung Wah Committee, 15 June 1938. This letter is reproduced in *One Hundred Years of the Tung Wah Group of Hospitals 1870-1970*, vol. 2, pp. 137-138.

⁸⁷ *HKH*, 2 Feb 1939, p.5.

⁸⁸ From the Governor Northcote to the Secretary of State MacDonnell, 17 August 1938, CO129/567/6, p.22. The Advisory Board to the Tung Wah Hospital was appointed by the colonial government after Tung Wah's 1896 reform. The Advisory Board was usually composed of former Directors of Tung Wah. In 1938, the Advisory Board had the four Chinese legislative councilors at that time as members. Compared with the Board of Directors, the Advisory Board was more supportive of government policies.

conditions. Conditions four and five were fiercely opposed. The Directors thought the effect of the proposed Medical Committee would be erosion of the power of the Board of Directors.⁸⁹ Reassured and to some extent misled by the Advisory Board,⁹⁰ the Tung Wah Committee nevertheless accepted the majority of the seven conditions with only the slight modification of condition four and five.⁹¹

A Medical Committee was set up to control the Tung Wah's financial and medical administration.⁹² The power of the Board of Directors was gradually confined to the hospitals' charitable works. The British government was pleased with the result of this 1938 reform. In the notes to the Governor's despatch, the Colonial Officer commented that '[i]t is very satisfactory that these proposals should have been accepted with such slight modifications, as they are fairly drastic in nature ...'⁹³

Under the Medical Committee's administration, after 1938 the Tung Wah quickly became a primarily western-style hospital. The colonial government's medical 'propaganda' was temporarily interrupted during the Japanese Occupation of the Second World War but resumed after 1945. In 1947, the Tung Wah Eastern Hospital stopped offering Chinese treatment completely and became the first 'pure' western-style hospital in the Tung Wah Group.⁹⁴ At the Tung Wah and Kwong Wah hospitals, due to the shortage of funds, Chinese medicine was only offered as a limited charitable service. Thus, Chinese traditional medicine was in effect excluded from Hong Kong's normative medical framework.

The Tung Wah Hospital, once a sanctuary for Chinese medicine in the British colony, became a provider of exclusively western medicine after the 1938 reform.

5. Chinese medicine as customary practice

⁸⁹ The Minutes of the Meeting of the Board of Directors of the Tung Wah Hospitals, 10 August 1938.

⁹⁰ For a detailed record of the communication between the Advisory Board and the Board of Directors, see the *Minutes of the Meeting of the Board of Directors of Tung Wah Hospitals*, 17 October 1938.

⁹¹ For the final agreement between the colonial government and the Tung Wah Hospitals, see the Letter from Chau Shiu-ng, Chairman of Directors to R. A. C. North, Secretary of Chinese Affairs, 28 October 1938, reproduced in *One Hundred Years of the Tung Wah Group of Hospitals 1870-1970*, vol. 2, pp. 138-140.

⁹² After negotiation with the Tung Wah Committee, the colonial government agreed to add two more representatives from the Advisory Board to the Medical Committee. In the end, the Medical Committee was composed by the Director of Medical Services (Chairman), two members of the Tung Wah's Advisory Board, three representatives from the Tung Wah Committee, the Visiting Medical Officer to Chinese Hospitals and Dispensaries, and the three medical Superintendents to the Tung Wah Hospitals (*HKGG*, 16 December 1938, p.921).

⁹³ [The Colonial Office's comments on the agreement between the Tung Wah and the Colonial Government] 6 March 1939, CO129/575/16, pp.2-3.

⁹⁴ The Tung Wah Eastern Hospital was established in 1929. See note 58 above.

Finally, then, what was the legal implication of Tung Wah's westernisation? From the perspective of legal transplantation, by fully westernising Tung Wah the colonial government conquered the last stronghold standing on the way of western-style public health law. If the colonial government had not taken such an aggressive approach to suppressing Chinese medicine at the Tung Wah Hospitals, sooner or later the Tung Wah Committee would have sought a proper legal status for Chinese medicine, as had happened in the late 1870s and early 1880s.⁹⁵ Excluded from the normative medical framework, Chinese medicine survived as a customary medical practice. As such, was Chinese medicine subjected to the regulation of Chinese customary laws? Were there any customary laws on Chinese medicine recognised by the colonial legislative and judicial systems? Answering these questions requires an investigation of the general framework established for Chinese customs in the colonial setting.

5.1 Chinese medicine under colonial customary laws

Custom in the colonial setting usually had one of two fates: being absorbed by the normative legal framework⁹⁶ or being superseded by state law when that custom was found no longer to apply.⁹⁷ Before being absorbed or replaced, Chinese customs existed side-by-

⁹⁵ Chinese elites in the late 1870s attempted to legalise Chinese medical practices and sanitation by lobbying the colonial government, especially the Governor Hennessy. For details see Carl T. Smith, 'The English-educated Chinese Elite in Nineteenth-century Hong Kong', in Faure, David ed., *History of Hong Kong, 1842-1984*, Hong Kong and London: Tamarind Books, 1995, pp.29-56.

⁹⁶ The customs concerning land in the New Territories, for example, were acknowledged under colonial law throughout the period of colonial rule. Section 11 of the New Territories Land Ordinance No. 5 of 1905 prescribed that '[i]n any proceedings in the Supreme Court in relation to land in the New Territories the Court shall have power to recognise and enforce any Chinese custom or customary right affecting such land'. This section was later consolidated by section 13 of the New Territories Ordinance Chapter 97, which was mandatory in effect in many cases, such as *Tang Kai-chung v Tang Chik-shang* [1970] HKLR 276, 295. Once the colonial legislation empowered the court to 'recognise and enforce' certain elements of Chinese custom, those Chinese customary laws became part of the 'common law' of the colony (*Liu Yuk-ping v. Chow To* [1962] HKLR 515). By recognising Chinese customs through legislation and judicature, Chinese customs were absorbed into the normative framework of colonial laws.

⁹⁷ Consider, for example, customary rules on Chinese family institutions: marriage, adoption and succession. Before the Hong Kong legislature explicitly abolished Chinese family customs in the early 1970s, many of these customs had been protected by the Marriage Ordinance No.7 of 1875, the Chinese Marriage Preservation Ordinance No.42 of 1912, the Supreme Court Ordinance No. 13 of 1873 and, arguably, Elliot's Proclamation of 1841. Section 37 of the Marriage Ordinance No.7 of 1875, as amended by the Marriage Amendment Ordinance No. 20 of 1910, provided that 'Chinese persons may be permitted to contract marriage before the Registrar General under this Ordinance only on proving to his satisfaction:-...(b) that a marriage has already been contracted or is about to be contracted between the parties according to the rites and customs observed in China...'. Section 37 of the Marriage Ordinance 1875 was in effect in the cases ... where the rights of Chinese T'sip or concubines were protected by Hong Kong courts. However, the introduction of the Marriage Reform Ordinance 1971 abolished Chinese customary marriage. As some scholars have suggested, Hong Kong's developing social

side with colonial laws, usually with customs prevailing when there were insurmountable differences between the two.⁹⁸ But after the case of *Wong Yu Shi and Others v. Wong Ying Kuen*, positions previously held by both Chinese and English law under section 5 of the Supreme Court Ordinance No. 3 of 1873 were reversed.⁹⁹ Based on Elliot's proclamation on Section 5 of Ordinance No.3 of 1873 and other ordinances, Hong Kong's courts 'embarked on a process of selective incorporation of the Chinese customary law on a case-by-case basis.' The result of that process, at least before 1971, was that 'a relatively coherent body of Chinese customary law, that nonetheless possessed 'its own Hong Kong flavour', began to emerge.¹⁰⁰

Even with this 'Hong Kong flavour' to colonial law, it was difficult to find a place for Chinese customary medicine. First, none of the colonial medical laws empowered the courts or the colonial government to acknowledge or enforce Chinese methods of medical treatment. Under the Medical Registration Ordinance No.41 of 1935, Chinese-style doctors practising according to 'purely Chinese methods' were exempted from the application of the ordinance (section 3).¹⁰¹ No provisions, though, explicitly empowered the courts to acknowledge or

composition, organisation and economic life necessitated these changes in the law. See D. M. Evans, 'Common Law in a Chinese Setting - The Kernel or the Nut?', 1 *Hong Kong Law J.*, pp.9-32, p.18. D.J. Lewis 'A Requiem for Chinese Customary Law in Hong Kong', in 32 *The International and Comparative Law Quarterly*, 1983, pp. 347-79; and, D. Evans and M. Emrys, 'The New Law of Succession in Hong Kong', in 3 *J. Hong Kong Law*, 1973, p.7.

⁹⁸ According to section 5 of the Supreme Court Ordinance No.3 of 1873, English laws were in force within the colony, 'except so far as the said laws shall be inapplicable to the local circumstances of the Colony or of its inhabitants.' Section 5 of Ordinance No. 3 of 1873 was derived from the original Supreme Court Ordinance No. 15 of 1844, and later consolidated into section 4 of the Application of English Law Ordinance No.2 of 1966. As long as Chinese customs had not been explicitly abolished or replaced by the colonial legislature, supported by section 5 of the Supreme Court Ordinance, many Chinese customary laws prevailed over English law. See, for example, the case of *Ho Tsz Tsun v. Ho Au Shi and Others*, in which the Chief Justice stated that '[a] perusal of the laws of the Colony, taken collectively, shows that the object has been to establish in a British Colony a system of British jurisprudence, in so far [as] it is not inconsistent with Chinese usage and custom', see [1915] 10 *HKLR* 69, p.76. In the case *In the Estate of Chak Chiu Hang and Others*, the court emphasised that Chinese customary law was only reserved to the extent that the Legislative Council had not introduced a law to replace that custom, see [1925] 20 *HKLR* 1.

⁹⁹ In the case of *Wong Yu Shi and Others v. Wong Ying Kuen*, the Chief Justice established a new principle where English law would generally prevail unless 'injustice or oppression' could be shown to be the probable result ([1957] *HKLR* 420).

¹⁰⁰ Lewis, 1983, p.378.

¹⁰¹ In the post-war period, Section 3 of Ordinance No.41 of 1935 was amended as follows: 'Nothing in this Ordinance shall be deemed to affect the right of any person of Chinese race, not being a person taking or using any name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods, to practise medicine or surgery according to purely Chinese methods and to demand and recover reasonable charges in respect of such practice. (2) For the purposes of this section- (a) the taking or using in Chinese by any person of the name, title, addition or description of 中医 or 中医生 or 中医师 or 唐医 or 国医 or of any words or characters

enforce Chinese methods of treatment. Thus, compared with customary marriage laws before 1971 and customary land rights in the New Territories, Chinese customary medicine remained mostly outside the legal domain, enjoying an even weaker ‘customary law’ status. Second, during the period 1900–1941, the courts did not deal with any case concerning the status of Chinese traditional medicine.¹⁰² Chinese medical custom had not been added to the ‘Hong Kong favour’ of colonial law on a case-by-case process. Lacking of any normative regulation of Chinese medical customs, would Chinese medicine gradually die out and be replaced completely by western-style medicine? Or, to the contrary, would Chinese medicine flourish in society without formative regulations? What were the legal effects on Chinese medicine in colonial Hong Kong? Answering this question demands a social explanation.

5.2 *Chinese medicine as customary practice*

Despite being limited by various normative restrictions, Chinese medicine remained popular, especially within the Chinese community before and after the Second World War.¹⁰³ The vitality of Chinese traditional medicine resulted, to some extent, from popular ignorance of normative restrictions. Under colonial medical laws, Chinese-style doctors were forbidden to use modern or western medical facilities such as x-ray machines or laser scalpels. In practice, however, both Chinese medical practitioners and patients ignored these restrictions. In order to attract Chinese patients, some western-style doctors also used some Chinese medical treatments, such as acupuncture. As medical anthropologist Marjorie Topley and sociologist Rance Lee observed, in reality the boundary between Chinese and western

implying specialization when preceded by the aforementioned characters shall not be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods: Provided that in any English translation of such characters the word ‘herbalist’ must be included; (b) the taking or using by any person of the name, title, addition or description of 西医, 医生, 医师, 医士, 医学士, 医学博士, 男医, 女医, 医科, 医家, 医寓, 医院, 医务院, 医所, 医务所, 医疗所, 诊疗所, 疗病院 and the taking or using of words or characters implying specialization if preceded by words or characters other than those specified in paragraph (a) shall be deemed to be the taking or using of a name, title, addition or description calculated to induce anyone to believe that he is qualified to practise medicine or surgery according to modern scientific methods.’ (Section 3 of the Medical Registration Ordinance, Chapter 161 of 1950 edition)

¹⁰² This conclusion is based on a survey of the cases in the database of *Hong Kong Law Reports*, covering cases from 1905. From *HKLR*, this study finds that the first medical case relating to an unqualified Chinese ‘medical practitioner’ appeared as late as 1960. See *Chan Hor Chuen and Another v The Queen* [1960] *HKLR* 257.

¹⁰³ The popularity of Chinese medicine among Chinese before the Second World War can be discerned by the large number of outpatients seeking Chinese medicine in the Tung Wah Hospitals. In the post-war period, various medical reports continued to report ‘stubborn’ Chinese belief in Chinese medicine.

medicine had never been so clearly defined as in the normative world.¹⁰⁴ People commonly move between Chinese and western medicine. The colonial government once reported that 74% of patients other than emergencies had been treated at some stage of their illness by traditional medical practitioners.¹⁰⁵

The actual popularity of Chinese medicine combined with its lack of clear legal status raised alarm-bells in Hong Kong society. People increasingly realised the problems brought about by the non-legal status of Chinese medicine. The popular English-language newspaper, *the Hongkong Standard*, asserted that 'the astonishing lack of proper safeguards and controls of Chinese medicine is a serious flaw in the Colony's laws: any Chinese, trained or untrained, ethical or unethical can practice Chinese medicine'.¹⁰⁶ Without normative regulation, the problem of quacks existing in Chinese medicine became a real threat to the colony's public health. It was reported, for example, that in 1957 alone of the roughly 200 persons sent to register as blind, 140 were blinded before the age of 10 years as a result of treatment by 'charlatans who usually applied acupuncture of the socket of the eye, usually with rusty needles, for 'nerve-pain'.¹⁰⁷ But under section 30 of the Medical Registration Ordinance No.25 of 1957, which was based on the long established principle of non-interference, the colonial government could not deal with these quacks practising in the name of Chinese medicine. In order to safeguard public health, it seemed that the question of regulating Chinese medicine was unavoidable.

How, then, best to regulate Chinese medicine? People's opinions diverged on this point. Some supported the non-interference approach, speculating that a stronger legal arm might bring social and political disturbance, denying people as it might the services they had come to accept.¹⁰⁸ Many others, especially western-style medical practitioners, continued to urge a complete ban on Chinese medicine. In the case of eye treatments, the colonial government decided that it was necessary to take a strong-armed approach. Section 30 of Ordinance No.25 of 1957 was amended in 1958 with the proviso that only western-style

¹⁰⁴ Marjorie Topley, 'Chinese Traditional Ideas and the Treatment of Disease: Two Examples from Hong Kong', 3 *Man*, 1970, pp.421-37; Topley, 'Chinese and Western Medicine in Hong Kong: Some Social and Cultural Determinants of Variation, Interaction and Change' in A. Kleinman et al., ed., *Culture and Healing in Asian Societies, Anthropological, Psychiatric and Public Health Studies*, Cambridge, Massachusetts: Schenkman Publishing Company, 1978, pp.111-141; Rance P. L. Lee, 'Interaction between Chinese and Western Medicine in Hong Kong: Modernization and Professional Inequality', in A. Kleinman et al., ed., *Culture and Healing in Asian Societies, Anthropological, Psychiatric and Public Health Studies*. Cambridge, Massachusetts: Schenkman Publishing Company, 1978, pp.289-310; Rance P. L. Lee, 'Perceptions and Uses of Chinese medicine among the Chinese in Hong Kong', 4 *Culture, Medicine and Psychiatry*, 1980, pp.345-375.

¹⁰⁵ Topley, 1978, p.133.

¹⁰⁶ 11 April 1974, quoted in Topley, 1978, p.125.

¹⁰⁷ *HKH*, 16 April 1958, p.172.

¹⁰⁸ Topley, 1978.

‘legally qualified and registered’ medical practitioners could treat eye diseases (Section 30 of the Medical Registration (amend) Ordinance No. 19 of 1958). This amendment incited fierce objections within the Chinese community. During the interval between the first and third readings of the bill it was observed that ‘all the Chinese newspapers, without exception [are] against the proposed Ordinance. Each paper printed at least one major article daily, and the total of articles printed during the two months could be around three hundred or more’.¹⁰⁹ At least nine Chinese herbalist associations united in protesting this new restriction on the grounds that the new law ‘will restrict the freedom of bona fide Chinese Herbalists in treating patients and deprive the Chinese people in Hong Kong of a source of low cost treatment in which they have confidence’. The Chinese herbalists associations demanded the government add a clause specifically exempting ‘Chinese Herbalists who use Chinese Herbs and methods in the treatment of ocular diseases’. The colonial government, however, refused this request on the ground that ‘such an amendment would completely nullify the powers that are sought for the protection of the public against the untrained and meddlesome individuals who advertise widely and blatantly that they can treat and cure diseases of the human eye’.¹¹⁰ Repressed by colonial medical legislation, Chinese medicine lost another important field of treatment.

Based on his in-depth case studies and after a careful comparison of the quality of both Chinese and western medicine, Rance Lee has suggested a convergence of Chinese and Western medicines, which in Lee’s opinion was not so difficult to achieve.¹¹¹ But in his study, Lee did not elaborate on the political, economic and legal factors behind the exclusion of Chinese medicine. Indeed, without equal political and legal status for western and Chinese medicine, it would have been difficult to achieve such convergence.

In the 1970s, the medical authority defended its exclusive normative framework on the ground that Chinese medicine did not have the uniform standards nor the depth of scientific knowledge that western medicine possessed. Thus, it was impossible for the medical authority to separate the bad ‘sheep’ from the good ‘goat’.¹¹² From an historical point-of-view, this defence is an excuse, disguising Europeans’ deep seated prejudice against Chinese medicine. The Tung Wah Hospitals would have been an excellent Chinese medical institution to assist the colonial government in formalising Chinese medicine. Indeed, as early as the 1870s, the Board of Directors of the Tung Wah Hospital had made specific

¹⁰⁹ Hongkong Ophthalmic Society, ‘Medical Registration (Amendment) Ordinance, 1958’, 10 *The Bulletin of the Hong Kong Chinese Medical Association*, 1958, pp.193-201, p.194.

¹¹⁰ *HKH*, 11 June 1958, p.200.

¹¹¹ Lee, 1978, pp.303-304.

¹¹² Topley, 1978, p.126.

medical regulations to enhance and to ensure the quality of Chinese doctors.¹¹³ Although based on Chinese medical theory and principles, those Chinese medical regulations shared the same objectives as the medical laws transplanted from Britain, namely, ensuring the quality of medical practitioners and protecting public health. If the colonial government had delegated certain legislative and administrative power to the Tung Wah Hospital and established a Chinese-style medical committee to supervise the development of Chinese medicine, the quack problem existing in the Chinese medical system would have been very probably much more limited or even avoided. The gap between colonial medical laws and the Chinese community would also have been bridged. This, however, did not occur. The socio-historical conditions did not allow such legislation to be made.

Conclusions

Looking at Hong Kong law mainly from a cultural-historical perspective, this Chapter has explored the impact of Hong Kong's medical laws upon the development of Chinese medicine. Tapped with the tunes of legal orientalism, Hong Kong's medical laws became 'the cutting edge' of imperialism, 'an instrument of the power of an alien state and part of the process of coercion'.¹¹⁴ As we have seen from previous Chapters, after a hundred years of endeavour, a 'modern and scientific' public health system was finally transplanted and started to take root in colonial Hong Kong. During this legal transplanting process, local elements, instead of being integrated, were excluded or suppressed by the colonial laws, as exemplified by the Tung Wah's westernisation. Influenced by orientalist prejudice, those transplanted medical laws were gradually derogated into colonial tools which played an important role in marginalizing and oppressing Chinese medical culture and traditions. Huge medical resources were wasted during this process.

The unequal relationships between Chinese and western medicines constantly reminds us the unequal nature of colonial rule, and pushes us to think general questions about law: was the exclusion of Chinese elements a specific feature of Hong Kong's public health law or a common feature of colonial laws? If it is a common feature, then how this understanding

¹¹³ Take, for example, Tung Wah's yishi guitiao (医师规条, literally, regulation of medical practitioners), published in zhengxinlu (征信录, annual reports) of 1873. This regulation contained fifteen clauses, providing procedures and standards to distinguish good Chinese doctors from quacks (Clauses 2-4). The regulation also defined the status and power of Chinese doctors at Tung Wah Hospital (clauses 1, 5-6, 8) and the procedure for patients to follow in selecting doctors by drawing lots (Clause 7). Tung Wah's xiyi guitiao (习医规条, literally, regulation of medical apprentices) of 1879 laid down strict requirements for the education and supervision of Chinese medical apprentices.

¹¹⁴ Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge University Press, 1985, p.4.

helps us to define the nature of colonial law? In the last Chapter of this dissertation, the Conclusion, we will continue to explore these theoretical questions.

Table 6.1 Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Tung Wah Hospital (1897-1938)¹¹⁵

Year	Inpatients		Outpatients		Year	Inpatients		Outpatients	
	Chinese medicine	Western medicine	Chinese medicine	Western medicine		Chinese medicine	Western medicine	Chinese medicine	Western medicine
1897	87.30%	12.70%			1918	45.78%	54.22%	85.36%	14.64%
1898	76.70%	23.30%			1919	46.24%	53.76%	85.07%	14.93%
1899	72.82%	27.18%			1920	45.49%	54.51%	84.76%	15.24%
1900	64.35%	35.65%			1921	46.17%	53.83%	80.29%	19.71%
1901	67.57%	32.47%			1922	44.55%	55.45%	82.10%	17.90%
1902	65.58%	34.42%			1923	46.03%	53.97%	74.58%	25.42%
1903	51.40%	48.60%	99.60%	0.40%	1924	45.75%	54.25%	75.65%	24.35%
1904	52.35%	47.65%	96.24%	3.76%	1925	50.27%	49.73%	66.59%	33.41%
1905	49.43%	50.57%			1926	47.13%	52.87%	85.03%	14.97%
1906	46.07%	53.93%	97.06%	2.97%	1927	46.63%	53.37%	75.29%	24.71%
1907	48.92%	51.08%	96.96%	3.04%	1928	41.68%	58.32%	89.02%	10.98%
1908	53.59%	46.41%	96.91%	3.09%	1929	42.34%	57.66%	89.75%	10.25%
1909	51.18%	48.82%	95.51%	4.49%	1930	45.39%	54.61%	83.01%	16.99%
1910	55.30%	44.70%	92.07%	7.93%	1931	41.54%	58.46%	76.43%	23.57%
1911	69.83%	30.17%	88.94%	11.06%	1932	44.13%	55.87%	84.46%	15.54%
1912	65.29%	34.71%	91.27%	8.73%	1933	38.45%	61.55%	86.34%	13.66%
1913	65.85%	34.15%	89.84%	10.16%	1934	43.94%	56.06%	87.29%	12.71%
1914	60.28%	39.72%	89.95%	10.05%	1935	35.67%	64.33%	83.16%	16.84%
1915	47.62%	52.38%	88.77%	11.23%	1936	33.65%	66.35%	83.16%	16.84%
1916	49.31%	50.69%	86.47%	13.53%	1937	45.10%	54.90%	82.39%	17.61%
1917	44.90%	55.10%	85.38%	14.62%	1938	30.45%	69.55%	90.48%	9.52%

¹¹⁵ The table is translated from Yang, 2007b, p.170. Dr Yang utilises the statistics contained in various government reports from 1897 to 1938: Reports of the Inspecting Medical Officer to the TWH (1897-1909); Reports of the Visiting Medical Officer to the TWH (1910-1920); statistics from medical and/or sanitary reports (1921-1938), Registrar General's Reports (1897-1912), Reports of the Secretary for Chinese Affairs (1913-1938). After a double check, this study confirms that the statistics contained in Dr Yang's table are highly reliable, with only one small revision of the year 1899, which is believed to be a technical error. As we can see that Dr. Yang's statistics are purely relied on English materials. Tung Wah Hospital had its own records of inpatients and outpatients under Chinese and Western methods. Tung Wah's own records although are not the same as the English records, the difference is not so big. Compared with English records, Tung Wah's records are not so complete, that is why this study cites Dr Yang's table.

Table 6.2a Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Kwong Wah Hospital (1911-1938)¹¹⁶

Year	Inpatients		Outpatients		Year	Inpatients		Outpatients	
	Chinese medicine	Western medicine	Chinese medicine	Western medicine		Chinese medicine	Western medicine	Chinese medicine	Western medicine
1911	59.76%	40.24%	91.79%	8.21%	1925	28.19%	71.81%	62.71%	37.29%
1912	57.31%	42.69%	87.19%	12.81%	1926	22.81%	77.19%	67.27%	32.73%
1913	52.66%	47.34%	90.85%	9.15%	1927	22.62%	77.38%	66.80%	33.20%
1914	57.45%	42.55%	62.59%	37.41%	1928	22.75%	77.25%	64.90%	35.10%
1915	46.79%	53.21%	35.05%	64.95%	1929	21.51%	78.49%	69.55%	30.45%
1916	45.74%	54.26%	32.75%	67.25%	1930	20.76%	79.24%	67.54%	32.46%
1917	54.10%	45.90%	32.74%	67.26%	1931	21.77%	78.23%	63.69%	36.31%
1918	51.78%	48.22%	34.64%	65.36%	1932	19.73%	80.27%	70.61%	29.39%
1919	41.87%	58.03%	29.36%	70.64%	1933	24.05%	75.05%	73.95%	26.05%
1920	37.89%	62.11%	21.55%	78.45%	1934	21.86%	78.14%	75.13%	24.87%
1921	27.66%	72.34%	21.76%	78.24%	1935	22.18%	77.82%	77.34%	22.66%
1922	30.93%	69.07%	40.28%	59.72%	1936	24.97%	75.03%	79.17%	20.83%
1923	31.51%	68.49%	64.24%	35.76%	1937	25.11%	74.89%	80.82%	19.18%
1924	27.92%	72.09%	60.48%	39.52%	1938	21.12%	78.88%	86.90%	13.10%

¹¹⁶ Table 6.2a is translated from Yang, 2007b, p.171, originally found in government reports on the Kwong Wah Hospital.

Table 6.2b Annual statistics and proportion of outpatients under Chinese and Western treatment respectively in the Kwong Wah Hospital (1911-1935)¹¹⁷

Year	Outpatients				Year	Outpatients			
	Chinese medicine	%	Western medicine	%		Chinese medicine	%	Western medicine	%
1911	2, 243	100	0	0	1924	48, 319	60	31, 572	40
1912	5, 874	88	783	12	1925	46, 568	63	27, 689	37
1913	8, 334	90	890	10	1926	67, 083	67	32, 646	33
1914	6, 061	64	3, 041	36	1927	84, 921	67	41, 279	33
1915	8, 090	35	14, 994	65	1928	83, 685	65	45, 257	35
1916	10, 201	33	20, 613	67	1929	94, 067	70	41, 191	30
1917	11, 091	34	21, 839	66	1930	94, 755	68	45, 536	32
1918	11, 260	34	21, 533	66	1931	90, 571	64	51, 450	36
1919	9, 742	30	23, 024	70	1932	97, 398	71	40, 537	29
1920	7, 832	22	28, 518	78	1933	114, 627	74	40, 373	26
1921	7, 869	22	28, 291	78	1934	138, 745	75	45, 934	25
1922	18, 080	40	26, 801	60	1935	162, 779	77	47, 700	23
1923	43, 796	64	24, 383	36	1936	—	—	—	—

¹¹⁷ Table 6.2b is translated from the table in Ho, 2009b, p.391, original found in Donghua sanyuan linian zhengxinlu (Tung Wah Three Hospital's Annual Reports).

Table 6.3a Proportion of inpatients and outpatients under Chinese and Western treatment respectively in the Tung Wah Eastern Hospital (1929-1938)¹¹⁸

Year	Inpatients		Outpatients		Year	Inpatients		Outpatients	
	Chinese medicine	Western medicine	Chinese medicine	Western medicine		Chinese medicine	Western medicine	Chinese medicine	Western medicine
1929	47.09%	52.91%	86.94%	13.06%	1934	38.70%	61.30%	72.72%	27.28%
1930	42.03%	57.97%	83.83%	16.17%	1935	26.69%	73.31%	68.57%	31.43%
1931	32.05%	67.95%	78.65%	21.35%	1936	30.05%	69.95%	63.22%	36.78%
1932	36.35%	63.65%	74.30%	25.70%	1937	29.86%	70.14%	71.97%	28.03%
1933	44.61%	55.39%	70.07%	29.93%	1938	22.14%	77.86%	80.03%	19.97%

Table 6.3b Annual statistics and proportion of outpatients under Chinese and Western treatment respectively in the Tung Wah Eastern Hospital (1929-1935)¹¹⁹

Year	Outpatients				Year	Outpatients			
	Chinese medicine	%	Western medicine	%		Chinese medicine	%	Western medicine	%
1929	45,436	84	8764	16	1933	54,004	75	17,809	25
1930	45,931	79	12,472	21	1934	67,083	67	23,711	29
1931	45,931	76	14,298	24	1935	unclear	unclear	unclear	unclear

¹¹⁸ Table 6.3a is translated from Yang, 2007b, p.172, originally found in government reports on the Kwong Wah Hospital.

¹¹⁹ Table 6.3b is translated from the table in Ho, 2009b, p.391, originally found in Donghua sanyuan linian zhengxinlu (Tung Wah Three Hospital's Annual Reports).

Chapter Seven

Conclusion

As long as we govern the Chinese according to our promise given while this colony was yet in its infancy, viz., to govern them as much as possible in accordance with their manners and customs, and to respect their religion and prejudices, we must of a necessity modify our laws to in order to meet their peculiar requirements Here two adverse arguments must be noticed. The first is that the Chinese are so ignorant of what is good for themselves that they must be taught, and forcibly too, by means of severe legislative measures.

— Dr. Ho Kai's Protest against the Public Health Bill, 1887

This thesis explores in new ways the various patterns of relations that evolved between transplanted law and Chinese tradition in this small part of the British Empire. It investigates the legal controls on four dimensions of Hong Kong's public health system, namely 'the body', 'plague', 'space' and 'medicine', which constitute the four main case studies of this research. This study shows that the growth process of Hong Kong's public health law was an important part of the story of the transformation of a traditional Chinese community to a western style modern metropolis.

Guided by the key question of 'how did transplanted English public health laws interact with Chinese customs and traditions' in colonial Hong Kong, each case study has been conducted in three related aspects. First, it investigates the rationales behind the introduction of specific public health laws and policies. Second, it explores the interactions between colonial law and Chinese community by tracing the changes of laws in response to Chinese reactions. Third, it conducts some brief theoretical analysis on the legal impact upon traditional Chinese society by applying some theories of post-colonial studies such as legal orientalism.

Based upon these four in-depth case studies, this study has two main findings. First, it argues that the colonists' imagination of 'primitive' or 'backward' Chinese customs went hand in hand with the oppressive public health laws. Second, the interrelationships between the transplanted law and the local Chinese community were not unified but varied considerably in different contexts in terms of different political, economic and social conditions.

Theoretical analyses of the two findings constitute the two main sections of this concluding Chapter. Section 1 applies the theory of legal orientalism to explain the connection between the negative image of Chinese customs and the oppressive colonial laws. The complexity of the interactions between alien law and local society will be analyzed in

detail in Section 2, where we see such complexity challenges the limit of certain theories and calls on a more explicit socio-historical approach to the study of colonial law.

Given the geographical and cultural proximity of Hong Kong's Chinese community and mainland Chinese society, this study believes what has been found interesting here in the crevices of Hong Kong history will also be useful and inspiring for key aspects of China's contemporary legal reform and modernization project. Thus in Section 3, the role of law in social transformation is discussed against a broader comparative and international background mainly through the topic of legalizing Chinese medicine.

1. Legal orientalism and oppressive colonial laws

As mentioned in our opening chapter, in a form of disciplined ideological presence, the discourse of orientalism constructs 'primitive' images of eastern cultures which in turn supports western 'superiority' over the East. Informed by Said's critical theory of orientalism, more and more legal scholars have taken it upon themselves to explore the impact of orientalist discourse upon the formation of oppressive western/international laws against the East. Inspired by legal orientalism, this thesis also pays special attention on the rationale behind colonial legislation.

The empirical findings of this thesis find that the colonists' perception of 'primitive' or 'backward' Chinese customs went hand in hand with the oppressive public health laws. The image of a negative Chinese constitutes a typical oriental discourse justifying the imposition of stringent, oppressive and exclusive style public health laws upon indigenous Chinese.

1.1 Fear driven oriental discourse in public health legislation

Examining the early years of the fledgling colony's system of public health in the case studies of plague and space controls, this study finds the colonists' orientalist attitudes were mainly driven by the fear of disease. Without the threat of formidable diseases, this thesis further argues, the colonial public health laws might have been much less stringent and anti-Chinese. As discussed in Chapter 2, before becoming a British colony, Hong Kong Island had been depicted as a 'charming and romantic' island in English narratives and the Chinese inhabitants as being very civil and full of industry.¹ The governing principles laid down in the Elliot Proclamations were of no prejudice against the Chinese. And promises were given to the Chinese, viz. to govern the Chinese as much as in accordance with Chinese laws and customs, and to respect Chinese religious ceremonies, and social customs.

However the outbreak of the formidable 'Hong Kong Fever' (malaria) dramatically changed the scene. The high mortality of the Fever frightened many Europeans out of their wits. In addition to epidemic disease, the problem of Chinese robberies and pirates was also

¹ See Chapter 2, Section 2.2

grave. By spring 1843, burglaries were almost an everyday occurrence in Hong Kong.² The twin specters of sickness and piracy earned the newly established colony a reputation of a 'pestilential and dangerous' island. It was at this stage the underlying tone of subsequent oriental discourse was established. That is in early British colonists' eyes, Chinese sanitary and medical customs were 'dirty and dangerous' and needed reform.

Seized with this fear of disease, British colonists were impelled to formulate policies of racial segregation and racial discrimination. As discussed in Chapters 2, 4 and 5, such an irrational fear developed into a 'sanitary syndrome' which deemed indigenous as vectors of diseases. Thus, despite Elliot's proclamation declaring respect for Chinese ways, public health became an area where maintaining legal pluralism was characterized as much less important as compared with the importance of protecting the health of European community. Restrictions were imposed by the Hong Kong government on the indigenous community of Chinese residents in the name of public health. As seen in the four core case studies, racial segregation was strictly enforced.

Early public health laws kept the European community well apart from the Chinese community, meanwhile, stretching its long hand regulating the latter remotely but ruthlessly. Yet diseases spread without boundaries. The 1894 plague brought the two communities into direct confrontation concerning their respective sanitary and medical systems. As seen in Chapter 4, in the time of plague, the panic-gripped European community urged severe legislative measures in order to regulate 'ignorant and backward' Chinese in line with western public health principles. Suppressing and discriminating against Chinese sanitary and medical traditions in turn strengthened the sense of superiority of western culture.

Fear driven orientalist discourse also justified the low compensation scheme for public health improvement. Like many other European colonies, lack of money was also in Hong Kong's case a very major reason for the slow development of public health, especially the public health of the Chinese residential areas. But in the case of Hong Kong, financial pressure was rather more an excuse made by the colonial rulers than a true shortage of funds. As early as the late 1870s, the colonial government started to have surplus revenues, and was able to make considerable financial contributions to the budget for the military. Despite the fact that ninety percent of this revenue was contributed by Chinese resident tax-payers, improvement the living conditions of the majority Chinese in the colony was not made an explicit government policy for its own sake – the concern was with the impact on European residents. Since, in the fear driven orientalist discourse, the Chinese residents of Hong Kong were seen as the vector of diseases, so Hong Kong's public health laws required Chinese landowners to shoulder the costs of sanitary improvement. As seen in Chapter 5, the

² Sheila E. Hamilton, *Watching over Hong Kong*, Hong Kong: Hong Kong University Press, 2008, p. 17.

extremely low compensation and the unequal revenue redistribution as between the colonial rulers and Hong Kong's Chinese subjects produced constant frictions. The 'good intention' public health law became a dead letter, and conversely, fostered bribery and corruption in the administration.

Indeed, whenever a formidable epidemic prevailed, the Chinese residents were liable to become the scapegoat of the colonists' fear of disease. Fortunately, such irrational fear can be overcome. As indicated by the case study of space control in Chapter 5, with the development of medical science and improved socio-historical conditions, Chinese residents in Hong Kong were no longer deemed as the source of serious disease. Although it took European colonists almost a hundred years to overcome the fear of the local Chinese way of life, such a transformation in attitudes had a profound significance in changing the legislative rationale of Hong Kong's public health laws. As emphasised in Chapter 5, after the mid-1930s public health reforms Chinese subjects became the beneficiaries of Hong Kong's improved public health policy and practice.

Compared with the fear of diseases, prejudices against Chinese traditions were more difficult to overcome, especially in the area of medical development.

1.2 Prejudice dominated orientalist discourse in the case of medical controls

Investigating the relationship between Chinese medicine and Hong Kong's early normative medical framework, Chapter 6 of this study argued that the colony's exclusive style medical laws had played an important role in suppressing and marginalising Chinese medicine. On a closer scrutiny of relevant archives, this thesis further argues that behind such legislative exclusion was the colonists' deep-seated prejudice against traditional Chinese medicine.

Hong Kong's medical laws in the early colonial period had a strong flavour of 'legal orientalism', whose legislative rationale, put in Said's words, was based upon prejudice against oriental values and methods.³ From the nineteenth to the early twentieth century, the officers who headed the colonial medical authorities had strikingly consistent views towards Chinese medicine. For Dr. Ayres, the Colonial Surgeon, Chinese medical treatment 'amounted to nothing' and was no better than 'witchcraft'.⁴ In his annual reports, Francis Clark, Hong Kong's first Medical Officer of Health, often attributed the high mortality rate of the Chinese population in Hong Kong to the dangerous treatment delivered by Chinese medicine.⁵ John Atkinson, the Principal Civil Medical Officer (1897-1912) was even more

³ Edward Said, *Orientalism*, New York: Pantheon Books, 1978, pp.12-13.

⁴ See the *Original Annual Report of Colonial Surgeon for 1874*, in *Sanitary Reports (Hong Kong) Laid before the Legislative Council 1879-1880*, (<http://sunzi.lib.hku.hk/hkgro/view/a1879/2449.pdf>).

⁵ See for example, 'Report by the Medical Officer of Health of the Colony of Honking for the

critical of Chinese medical treatment.⁶ For Atkinson, 'the so-called Chinese medical methods are really nothing but empiricism or quackery.'⁷ Using western medical development as a yardstick, colonial medical officers sneered at anything different.⁸

Although not all the western medical professionals thought Chinese medicine was dangerous to public health, those who were sympathetic to Chinese medicine tended to be more junior than the above mentioned medical officers, and thus had less influence in public health policy-making and legislation.⁹

Once the medical officer's negative impression of 'dangerous Chinese medicine' was fixed, this concretized image became a powerful ideology, which greatly contributed to the formation of the Colony's exclusive public health policies and laws on Chinese medicine. In the public health domain, the power of prejudice was often much stronger than might be imagined. The superiority of 'scientific' western medicine had been deemed an important indicator for the 'superiority' of western cultures which, in turn, provided much of the intellectual and moral logic of colonialism.¹⁰

Infused with the tunes of legal orientalism, Hong Kong's medical laws became 'the cutting edge' of imperialism, 'an instrument of the power of an alien state and part of the process of coercion'.¹¹ Local elements, instead of being integrated into a more comprehensive system of public health, were excluded or oppressed by the colonial laws. Influenced by orientalist prejudice, these transplanted medical laws were gradually transformed into colonial tools which played an important role in marginalising and

Year 1896', in *SP for the year 1896*, p.349.

⁶ *Report of the Commission appointed by H. E. Sir William Robinson To enquire into the Working and Organization of the Tung Wa [sic] Hospital...*, 1896, p.63.

⁷ 'The Principle Civil Medical Officer's Report for 1897', in *SP for the year 1897*, pp.379-380.

⁸ See Elizabeth Sinn, *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*, Hong Kong: Hong Kong University Press, 2003, p.68.

⁹ For instance, during the 1894 plague, some western doctors recommended the colonial government to adopt some Chinese ways to combat the bubonic plague. These western doctors believed that Chinese medicine could to some extent help the government to win the battle against the plague. These pro-Chinese recommendations were however criticised by medical officers such as Dr. Lowson, the then Superintendent of Hong Kong's Government Civil Hospital. Lowson and Ayers believed only western style sanitation and medication could control the plague. For details see G.H. Choa, 'The Lowson's Diary: a Record of the Early Phase of the Hong Kong Bubonic Plague, 1894', in *Journal of the Hong Kong Branch of the Royal Asiatic Society*, vol. 33, 1993, p. 133.

¹⁰ Ruth Bollen, 'Why did Western countries attempt to impose their medicine on indigenous societies in the nineteenth century? What were the results?' in *The New Zealand Medical Student Journal*, No. 14, November 2011, p.29. Also See F. Fanon, *Studies in a Dying Colonialism*, London, England: Earthscan Publications; 1989, pp.121-122. For further references, see Nicolson M., 'Medicine and Racial Politics: Changing Images of the New Zealand Maori in the Nineteenth Century', in Arnold D, ed., *Imperial Medicine and Indigenous Societies*, New York: Manchester University Press, 1988.

¹¹ Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge University Press, 1985, p.4.

oppressing Chinese medical culture and traditions. Huge medical resources, actual and potential, were wasted during this misguided process.

Largely influenced by cultural prejudices, an equal and effective communication flow between western and Chinese medicines was not really possible. Perhaps a colonial milieu was not a good setting for a healthy communication between different cultures. Thus, as some scholars have observed, in colonial settings, the process of legal transplantation, from legislation to enforcement, was frequently accompanied by cultural conflicts.¹² On the one side was the colonizers' ignorance to the indigenous social forces accompanied with either tough measures or exclusion as the routine solution to indigenous cultural resources. On the other side were the refutation, endurance and resistance of the indigenous society.¹³

Under the main period of review (1841-1941) in this thesis, prejudices dominated much of Hong Kong's medical legislation. It was not until the late 1950s that the Chinese community started to openly object to the colony's exclusive style medical laws.¹⁴ Limited by space, this thesis does not elaborate the interactions between law and Chinese medicine in the post-WWII period. Here, suffice it to say that compared with the situation before WWII, Chinese-style doctors in post-war Hong Kong were more sensitive to colonial medical legislation, thus making it more difficult for the colonial government to pursue policies and create new law restricting Chinese medicine.¹⁵

Looking back, Hong Kong's history of medical legislation gives us many good lessons. First, prejudice dominated legislation derogated the law into the tool of ruling classes and boosted a false 'superiority' of western medical science. Secondly, prejudice driven laws achieved little in practice, but tended to encourage instead cultural frictions and misunderstandings. Thirdly, excluded/oppressed by medical laws, huge amounts indigenous Chinese medical resources were wasted. By highlighting the negative power of prejudice, we can be more alert to the hidden rationale behind the law. When the law becomes an open arena rather than the tools of ruling classes, healthy and equal communications between different cultures are expected to be carried out. And the law could have possibly played a much positive role in fostering cultural diversity and equality.

¹² See John L. Comaroff, 'Colonialism, Culture and the Law: A Foreword', in 26 *Law & Social Inquiry*, Issue 2, 2001, pp.305-314; Laurelyn Whitt, *Science, Colonialism and Indigenous Peoples: The Cultural Politics of Law and Knowledge*, Cambridge University Press, 2009.

¹³ See Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, Cambridge University Press, 2002, p.3 and pp. 253-265.

¹⁴ For example, the Medical Registration Amendment Ordinance No.19 of 1958, which attempted to outlaw Chinese doctors treating eye disease, compelled the unification of Chinese style medical practitioners. Led by Chinese Herbalists Associations, the Chinese community for the first time protested against the restrictive medical laws. For details see Comments on the Medical Registration (Amendment) Ordinance, 1958', in 10 *The Bulletin of the Hong Kong Chinese Medical Association*, 1958, pp.193-201.

¹⁵ Yongguang Xie, *History of Chinese medicine in Hong Kong*, Hong Kong: Joint Publishing Co., 1998.

1.3 Imagined orientalist discourse in the case of body controls

In the heyday of western imperialism, once a social problem in an Oriental society was identified, colonists often assumed responsibility for indigenous people and prescribed remedies, which often took the form of law. Yet the ‘problem’ identified by western colonists might not be seen as a problem in the oriental societies themselves.

In Chapter 3, we see how the colonists’ imagined problem of Chinese ‘brothel slavery’ justified Hong Kong’s CD legislation. As we know, the colonial government at first was reluctant to introduce the Venereal Diseases Ordinance No.8 of 1857. The justification was that a public sanction of prostitution, like the issue of gambling licensing, was morally unacceptable according to Christian creeds. But the ‘identification’ of Chinese ‘brothel slavery’ and the allegation of ‘shameless’ and ‘cruel’ brothel keepers gave the CD legislation extra moral authority to counteract moral charges from Christian standards.¹⁶ As we see Hong Kong’s CD debates of the 1850s first and later of the 1880s, the discourse of Chinese ‘immorality’ and ‘slavery’ worked more efficiently than the concern of public health, even though such an orientalist portrait was poorly founded.¹⁷

During Hong Kong’s third round of CD debates in the 1920s, the discourse of ‘brothel slavery’ was deployed by the anti-CD organizations to abolish Hong Kong’s CD regulations. Fighting for the rights, equality and liberty for women, the West -- and the British public in particular -- were paranoid in insisting an abolishing the system of CD controls in any part of the world, including the British colony of Hong Kong. In westerners’ eyes, the systems of CD control and brothel registration achieved nothing but instead encouraged women traffic and brothel slavery. And Chinese traditional social institutions of concubinage and mui tsai were also seen as involved with human trafficking, so they too must be abolished.

In face of the danger of these traditional social institutions being prohibited and abolished of, the Chinese elite were compelled to construct a significant difference between mui tsai and prostitution by defining the former as ‘good’ human trafficking and the latter ‘evil’ human trafficking as a strategy to ‘stem the intrusion of English law into their patriarchal system’.¹⁸ Yet it was not an easy task to convince the West that Chinese ‘brothel slavery’ was rather an imagination held by the westerners.

The Chinese term of 妓女 (*jinü*, literally prostitute), was originally derived from the Chinese ideograph of 艺妓 (*yiji*, literally female artists, same as the Japanese Geisha). Although, many of Chinese *jinü* were obtained from purchase, they did not consider

¹⁶ For the details of the discussion of ‘brothel slavery’, see Chapter 3, section 3.1.1 ‘Chinese ‘brothel slavery’ as a justification for the CD legislation’.

¹⁷ Hong Kong’s second round CD debate of the 1880s was triggered by the anti-CD regulation movement in Britain. For details, see Chapter 3, section 3.2.1 ‘Controversies of the CD Acts in Britain’.

¹⁸ Sinn, ‘Chinese Patriarchy’, pp.146-47.

themselves as ‘slaves’. They were trained to provide entertainment through their dancing, singing or telling stories. Sex was not the core element, especially among those sophisticated high classes of prostitutes. Even among those ordinary prostitutes known in Chinese as *changshan* (长衫), who provided sexual services for money, ‘brothel slavery’ was a rare occurrence, as many of the *changshan* turned into brothel keepers as an ‘upgrade’ for their career and so had an understanding of the position of the women under their ‘management’.¹⁹ Unfortunately, at that time not many European colonists appreciated the difference between British prostitution and Chinese *yiji*. Thus Western ideas and legal theories on prostitution dominated and shaped official understandings of Chinese traditional prostitution.

Remarks

Fear, prejudice and imagination are the main driving forces for the formation of Hong Kong’s orientalist discourse which not only influenced legislation on public health but also many other aspects of colonial legislation. The many ordinances enacted by the colonial government before the Second World War that were in affect ‘anti-Chinese’ were largely the result of European prejudicial attitudes towards the Chinese inhabitants of Hong Kong.²⁰ Assuming the ‘lawlessness’ of the colonized society and the ‘irrationality’ of indigenous social customs and culture, colonial laws became the cutting edge of imperialism.²¹

2. Colonial governmentality versus legal orientalism

It is however important to note that Western interest in the East is not necessarily sinister. Orientalist attitudes can also be the products of or represent a true willingness to understand and embrace foreign cultures. As we have seen in this study, Dr. Eitel, John Pope Hennessy, James Stewart Lockhart and many other colonial officials invariably tried to understand the Chinese residents of Hong Kong from a genuine concern with ‘Chinese’ perspectives and interests. Their willingness to listen to Chinese voices encouraged ardent support from open-minded Chinese elite. Apparently, then, the concept of legal orientalism cannot alone account for the styles of co-operation that emerged between the colonizers and the subjugated.

¹⁹ For a comparison between Chinese traditional sex culture and British prostitution see Cheung Ngayan, ‘Accounting for and Managing Risk in Sex Work: A Study of Female Sex Workers in Hong Kong’, Centre for Criminology & Sociology Royal Holloway College University of London, PhD Thesis, 2011, pp.35-37. Sinn’s paper ‘Women at Work’, p.28, also indirectly illustrates how English legal concept of prostitution affected Chinese traditional prostitution.

²⁰ Peter Wesley-Smith, ‘Anti-Chinese Legislation in Hong Kong’, in M. K. Chan ed., *Precarious Balance: Hong Kong between China and Britain 1842-1992*, M E Sharpe: Armonk, NY and London, England, 1994, pp.91-105.

²¹ Keith Goodwin, ‘Travelogue writers in the Age of Inquiry: Law, Orientalism, and Enlightenment Ideology in Southeast Asia’, in *The Forum: Journal of History*, 2008) (1)2, p3. Available at: <<http://digitalcommons.calpoly.edu/forum/vol1/iss1/5>>.

Indeed, unlike European orientalist discourse which often presented ‘truth’ in an intangible form, the evolving co-operation was in many ways a matter of concrete day-to-day practice. While orientalism fostered segregation, alienation, and an anti-European ethos (on one side) and an anti-Chinese ethos (on the other), practical co-operation encouraged mutual trust and contributed significantly to the stability of colonial rule. If this study only paid attention to centrifugal effect of the legal orientalism and neglected the centripetal force of cooperation, then the story of legal transplants would be rather incomplete. Due to the importance of co-operation, this section first investigates the rationale behind the cooperation by resorting to the theory of colonial governmentality, then to discuss the concept of legal hegemony against Hong Kong’s concrete socio-historical backdrop.

2.1 Pragmatic co-operation

As seen in the case studies of body, plague and medical controls, Chinese elites were not infrequently assisting the colonial government to enforce public health laws and policies among a sometimes reluctant Chinese community. The impetus for Chinese co-operation was however different in different cases. And the colonial government also deployed different strategies to enlist Chinese support. As mentioned briefly in the introductory chapter to this study, the political rationales and strategies of colonial governmentality were not so consistent or systematic, but instead often based upon pragmatism. On a closer examination of the co-operation between the colonial government and Chinese elite, this thesis further argues that it was pragmatism rather than a true appreciation of the content and value of Chinese traditions that constituted the foundation of co-operation in colonial Hong Kong.

In the case of venereal diseases control, the colonial government encouraged Chinese support for the implementation of the Contagious Diseases Ordinance 1867 by allowing Chinese to tackle human trafficking according to Chinese traditions. As described in Chapter 3, once Chinese were motivated, the Po Leung Kuk’s assistance soon showed itself to be more efficient than the official police force in dealing with kidnapping and providing protection of women and children. The Chinese residents of the colony, through the participation of the administration of the CD Ordinance first and the Protection of Women and Girls Ordinance later, were thus able to preserve the mui tsai system and concubinage extra-legally under the colonial regime. The colonial government, though not necessarily agreeing with the motives of Chinese co-operation, was nevertheless satisfied with the result: streets were clean of hookers, brothels were kept under strict inspection and brothel slavery was avoided, and last but not least the health of European soldiers and sailors was protected.

The co-operation tended, however, to be based upon pragmatism instead of common values, since neither Chinese mui tsai nor concubinage was accepted by English common law. Yet a strict enforcement of common law on this issue would undoubtedly lead to cultural

collision. The core values of the then Chinese community were still embedded in Confucian style patriarchy. As observed by Dr. Eitel, under Chinese patriarchy, 'no one could be free but all were knotted to a bond of equality and mutual regard'.²² Due to the distinctive socio-historical conditions of nineteenth century China, the western legal concept of human trafficking for slavery was inapplicable to Chinese practices of selling and buying persons such as mui tsai and concubines. To deal justly with the 'slavery' of China, Dr. Eitel suggested 'to invent a new name'.²³ The colonial government certainly would not go so far as to 'invent' a new legal name for Chinese customary practices of selling and buying persons. Neither had the colonial government legally forbidden the mui tsai and concubinage systems under this period of review. Though without common values, this pragmatic co-operation had its positive social effect: possible cultural collisions were avoided and colonial stability was maintained.

Such a pragmatic co-operation was also seen in the case of plague control. In the time of plague, as seen in Chapter 4, the Tung Wah Hospital at first refused to co-operate with the colonial government, and did not become more flexible until the colony's Chinese residents were allowed to use their own anti-plague methods. The colonial government, though prejudiced against Chinese medical customs, had to make a compromise, since strict enforcement of western style anti-plague measurements had already turned Chinese inhabitants in the Tainpingshan district into a disgruntled mob. In a context of different medical cultures with each prejudiced against the other, pragmatic co-operation was the only viable approach if things were to move forward.

2.2 Pragmatic style legislation

In the case of medical controls, pragmatic strategy was also taken by the colonial government. But here, things were a little different. Chapter 6 has disclosed that in Hong Kong there was a deep seated prejudice on the part of many of the colony's European elite against Chinese medicine. Formal and friendly co-operation between Chinese and western style medical practitioners was difficult, as many local Chinese had little understanding of western medicine. On a closer examination of legislative archives, this section further argues that the colonial government's tolerance of Chinese medicine was purely motivated by practical considerations. When the opportunity was ripe, legislation was introduced fully to forbid the application of Chinese traditional medical practice. Chinese style midwifery Wan Po provided an apt illustration of this practical approach to public health legislation.

²² *PP*, 1882 [C.3185], p.51.

²³ C.3185, pp.52-53.

To protect mothers and infants from malpractice in the midwifery profession, a midwives ordinance was transplanted to colonial Hong Kong.²⁴ In the first reading of this proposed ordinance, Dr. Ho Kai suggested to insert a section which exempted the Chinese community from the formalities required by the new law (section 13 of Ordinance No. 22 of 1910). However Mr Keswick, another unofficial member of the Legislative Council strongly objected to section 13, which in his opinion ‘takes the sting out of the Bill altogether’ and was ‘contrary to the spirit of the proposed Ordinance’. Mr. Keswick suggested expunging section 13, ‘because if we are going to put it in, we might as well not have the Bill at all’.²⁵

Keswick’s comment exactly follows western medical authority’s logic: Chinese midwives were dangerous if they remained unregistered, so the health of the public was still in danger. Ho Kai defended section 13 on two grounds. First, Chinese demands for midwives far exceeded the capacity of the then qualified western-style midwives.²⁶ Second, a qualified western-trained midwife charged \$5 to \$15 for each delivery, while Chinese Wan Po charged no more than \$1. Under such conditions, even if the Chinese were forced to use qualified midwives and pay \$5 or \$15, ‘the majority would have to go without any assistance whatsoever, and that would be worse than the present circumstances’.²⁷ Ho Kai further commented that ‘[u]nless the government had enough western-trained midwives, it would be impossible to make such sweeping ordinance.’ The Attorney-General entirely accepted Ho Kai’s suggestion, and agreed that ‘in the space of five or ten years we may be able to expunge it [section 13], for the Chinese community may then be able to make use of the services of better trained nurses when the number of the latter has largely increased’.²⁸

Twenty-five years later, the Midwives Amendment Ordinance No.21 of 1936 finally repealed section 13 of the Midwives Ordinance No. 22 of 1910. At that time the number of qualified midwives was still not adequate to meet demand. In order to resolve this problem, the colonial government made some concessions. In 1937, 111 Chinese midwives of Wan Po were registered under the Midwives Ordinance after a short period of training.²⁹ Chinese-

²⁴ Hong Kong’s first Midwives Ordinance No.22 of 1910 was ‘based almost entirely on the Imperial Midwives Act of 1902’. *HKH*, 1st September 1910, p.84.

²⁵ *Ibid*, pp.83-84.

²⁶ In the year 1910, altogether there were only fourteen qualified midwives, with ultimate capacity of delivering 2,800 cases per year. Chinese population in the early 1910s was more than 440,000 with a birth rate around 6.1 per 1000 (*Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1909*, pp.9-10). The official birth rate, as the medical officer acknowledged, was much lower than the actual number owing to Chinese reluctance to report birth of infants of females and those not surviving one month. According to probability theory, the number of female and male infants was approximately the same. Therefore the actual birth rate of Chinese would be close to 10 per 1000, which means at least 4,400 Chinese women would need the care of midwives. If Chinese traditional midwives were banned by law, more than 1,500 Chinese women had to go labour on their own.

²⁷ *HKH*, 1 September 1910, p.83.

²⁸ Note above, pp.82-84.

²⁹ Xiangyin Yang, ‘Ying’er siwanglǔ yu jindai xianggang de ying’er jiankang fuwu (1903-

style dentists and oculists had a similar experience to that of Chinese traditional midwives under colonial medical laws. Limited by space, this section will not elaborate this topic. Suffice it to say here that by taking cautious and pragmatic style approach to legislation, the replacement of Chinese traditional medical practices by more 'western' based treatment was carried out in a gradual way. Consequently, the system of protection of Chinese health in general avoided abrupt interruption. The destructive power of legal orientalism against Chinese medical customs was therefore limited to a certain extent.

Based upon the above analysis, we can safely infer that colonial governmentality especially its pragmatic strategy was an antidote to legal orientalism. Being deemed 'backward', 'dirty' and 'dangerous', Chinese subjects experienced exclusion, distrust and many other unequal treatments under the colonial regime. Thanks to the pragmatic governmentality, these unequal treatments had not gone so far as to incite social unrest among the Chinese community. As mentioned before, except for some strikes, Hong Kong society in general maintained stability before the Second World War.³⁰ Hong Kong's stability raises another theoretical issue concerning colonial governmentality, namely colonial dominance or legal hegemony?

2.3 Dominance with legal hegemony

Chapter 1 has introduced briefly the concepts of colonial dominance and legal hegemony and raised one of the key questions of this thesis, namely, had Hong Kong's colonial governmentality been colonial dominance or legal hegemony? On a closer scrutiny of strategies of Hong Kong's colonial governmentality, this thesis concludes that Hong Kong's colonial governmentality was 'dominance with legal hegemony'.

According to the subaltern theory, colonial dominance is closely connected with violent conquest and resistance.³¹ As we know, the establishment of colonial Hong Kong was a result of China's defeat in the Opium Wars. No matter how lofty and benevolent were the purposes enshrined in the Queen's Royal Instruction, the first and foremost ruling strategy of colonial Hong Kong was colonial dominance where the protection of colonists' lives and properties was of first priority. Any attempt to subvert or threaten the colonial regime would be suppressed robustly by the colonial power. In the areas of public order and public health in particular, Chinese subjects were put under stringent laws. As we have seen from analysis of the early development of Hong Kong's public health laws, being prejudiced, oppressed

1941nian)', (Infant Mortality and Infant Health Services in Modern Hong Kong, 1903-1941) 1 *Zhongguo shehui lishi pinglun* (Chinese Social History Review), 2007

³⁰ Henry J. Lethbridge, *Hong Kong: Stability and Change, a Collection of Essays*, Hong Kong: Oxford University Press, 1978.

³¹ Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India*, Harvard University Press, 1997, Preface XII, p.64.

and excluded, the internal dynamics of Chinese sanitary and medical customs had little chance of being absorbed by the transplanted public health system. In other words, the transformation of Chinese sanitary and medical traditions to a so-called modern public health system was a one-way direction of westernisation. It is in this macro-sense that the strategy of Hong Kong's public health laws was an embodiment of colonial dominance. But the exercise of colonial power was not always based upon coercion. As the Cambridge School argues, in order to keep the colonial order, the colonizers can't just imagine that they are superior over the colonized. They must construct a hegemonic discourse and to make it acceptable to the colonized, at least to the local elites. This was also exactly the case in colonial Hong Kong.

From the four empirical case studies, we see that the exercise of colonial power was hardly carried out in an abrupt coercive manner except at crisis times such as the outbreak of the plague. In terms of micro-day-to-day practice, colonial power was often exercised through co-operation, compromise and persuasion. As seen from the above two sub-sections, the colony's Chinese elite was willing to co-operate with the colonial government once it saw the benefits of such co-operation. For instance, in the case of body control, through the administration of CD laws, Chinese elite was able to take matters into their own hands, viz., to preserve Chinese traditional social institutions of *mui tsai* and concubinage under the colonial regime. In the case of space control, once the colonists overcame the 'sanitary syndrome', Hong Kong's public health laws were able to show true concern for the welfare of indigenous Chinese. In the case of medical controls, colonial law in Hong Kong made compromises by adding exceptional clauses concerning Chinese distinctive sanitary and medical customs. The long existence of Chinese style midwifery, dentists and eye doctors to some extent reflected the colonial government's reluctance to exert coercive power over indigenous society. Waiting until the local society was ready to accept the 'superiority' of western medical science was an often used strategy employed to introduce the western style medical laws. In this sense, the notorious orientalist discourse also played an important role in constructing the hegemonic discourse of colonial rule.

Based upon the above analysis, we can safely infer that Hong Kong's colonial governmentality was 'dominance with legal hegemony'. The colonial regime, though of a malevolent origin, did not necessarily lead to evil endings. Sometimes, the colonial laws perform non-repressive function of colonial rule inducing a mode of life as legal abiding which can be described as legal hegemony. Yet one should not neglect that such a mode of legal abiding or 'rule of law' was premised upon western values and methods. Chinese ways of life, no matter how reasonable from a Chinese socio-historical perspective, were excluded by the alien authority structure. In other words, the colonizer's hegemonic discourse was complementary to the oriental discourses. Hong Kong's colonial governmentality could to

some extent offset the destructive power of legal orientalism against Chinese traditions and customs, but failed to challenge the latter. Here one might wonder why a day-to-day co-operation between the Chinese elite and the colonial government could not change the colonists' orientalist prejudice against Chinese traditions. In order to tackle this intellectual puzzle, we need to put this question against a broader international background.

3. International background for the triumph of legal orientalism

As seen from the empirical studies of this thesis, the co-operation between the Chinese elite and the colonial government had contributed significantly to maintaining colonial order in Hong Kong. For instance, in the case of body controls, supported by Chinese elite, the CD legislation almost benefited all sections of Hong Kong society. But questions remain. If the CD laws were as good as the colonial government claimed, why did the British public raise the issue of social hygiene again in the 1920s and finally push Hong Kong government to abolish CD legislation and brothel laws completely in the middle of the 1930s? In other words, why did Chinese co-operation fail to challenge the power of legal orientalism and also fail to bring Chinese internal dynamics into the colony's transplanted legal system? Limited by space and time, this section will not go into details of this question, but puts forward some tentative conjectures to offer possible explanations.

First, British cultural paranoid thinking enhanced the Orientalist view of Chinese traditional social institutions.³² According to some scholars, a cultural paranoia overtook Britain in the late nineteenth century, as its industrial prominence was seriously challenged by the U.S.A and other new industrial nations, its military position and imperial holdings by Germany, and its domestic peace and class structure by the spread of labor unrest and the growth of socialism. Influenced by this cultural paranoia, the British public exaggerated and over-interpreted many social problems such as female slavery and child prostitution in oversea places. For instance, Mrs. Neville-Rolfe and Dr. Hallam, the two commissioners from British National Council for Combating Venereal Disease, submitted a scathing report to the Colonial Office on Hong Kong's medical and social conditions.³³ In this report many Chinese institutions were scorned and belittled as corrupted agencies, for instance, the Tung Wah Hospital was very dirty and badly equipped; the Po Leung Kuk, a place supposed to be refuge for Chinese women and children, was largely used as a recruiting ground for cheap supplementary wives by members of the committee of the PLK, and so on. As for the brothel registration and inspection system, the Commissioners found that instead of protecting those unfortunate women from brothel slavery, it put 'the artificial value on the Chinese girl ... [became] the main inducement to the kidnappers.'

³² For a detailed introduction of British cultural paranoia see J Walkowitz, 1980, p. 247.

³³ C Neville-Rolfe and R. Hallam, 'Hong Kong Confidential Report National Council for Combating Venereal Diseases Commissioners', in CO 129/472, pp.356-382.

Mrs. Neville-Rolfe's extreme opinions were refuted by a committee appointed by the Governor.³⁴

But the National Council's opinions prevailed among British public who had the Parliament as a resource with which to badger the Colonial Office to exert pressure on colonial government. The colonial officials never tired of complaining to each other that 'the English public do not always realise the delicacy required in ruling an alien civilisation'. For London's politicians, as some scholars have noticed, local opinion, whether indigenous or colonial, was less influential than domestic opinion which was supported by the growing power of the parliament vote.³⁵

Secondly, mainland China's turbulence, especially its wars in the early 20th century impoverished Chinese population. Thousands and thousands Chinese refugees flooded into the colony of Hong Kong, a movement which rendered meaningful implementation of any public health regulations very difficult. According to official records, within ten years between 1919 and 1929, Hong Kong's Chinese population almost doubled from 584,500 to 1,125,000.³⁶ In contrast, the colonial government's expenditure on public health per person only increased slightly during the same period.³⁷ This means, the welfare conditions of the majority Chinese subjects were looked after by Chinese voluntary associations such as the Tung Wah Hospital, the Po Leung Kuk whose operation mainly relied upon funding from the Chinese residents of Hong Kong themselves. Under such stringent social and economic conditions, the maintenance of Chinese associations was difficult, and their work looked weak when judged according to the standards of more wealthy countries.

But European colonists, especially those who had little local knowledge of Chinese culture and tradition, did not always connect the squalor they found so offensive with the overwhelming poverty of the then Chinese population, for whom the crowded conditions and filth were chronic problems.³⁸ Instead, the social hygiene problems were interpreted as the

³⁴ 'Report by Committee of Legislative Council appointed to consider the findings of the National Council's Committee' enclosed to Despatch from R. E. Stubbs to Winston Churchill, 3 April 1922 in CO129/474, pp. 338-359.

³⁵ Levine, 1998, p.686.

³⁶ *Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1919* at 9 and *Medical and Sanitary Report for the Year 1929* at 27.

³⁷ The colonial government's yearly expenditure on public health increased from \$732,400 in 1920 to \$1,580,476 in 1929. The average annual public health investment was \$1.22 per person in 1920, and \$1.38 in 1929. Taking account of the large proportion of public health expenditure was actually consumed by a small group European population (varied between 15,000 and 19,000 yearly), it would not be exaggerated to conjecture that the majority of Chinese subjects in colonial Hong Kong during this period benefited little from the colony's public health improvement. The calculation is based on the statistics from Hong Kong's Blue Book, available on the library database of the University of Hong Kong: <http://sunzi.lib.hku.hk/hkgro/browse.jsp>.

³⁸ Levine, 1998, pp. 687-688.

results of the ‘inferiority’ of Chinese traditional social institutions run by self-indulgent leaders who were full of sensualism and were morally corrupted.

Last but not least, the impact from China’s dramatic western style modernisation. China’s ‘victory’ in the First World War won it nothing but further humiliation in its failure to secure the return of sovereignty over Shangdong Province, which was simply transferred from Germany to Japan by the decision of the Paris Convention. This event stimulated the famous 1919 Fourth May Movement which opened the prolonged national debate on Chinese modernisation: a wholesale westernisation or a more selective approach.³⁹ By the early 1920s, many of Chinese traditional social institutions such as the mui tsai and concubinage systems had been stigmatized as ‘barbarian’ feudal residual customs and even the Chinese traditional medicine obtained a notoriety of a ‘backward, unscientific’ and ‘dangerous’ craft.⁴⁰ The ‘wholesale westernisation’ approach gradually dominated Chinese modernisation debate.

In response to the prevailing thoughts of ‘wholesale westernisation’, and in breaking away Chinese ‘backward and barbarian’ image as soon as possible, the Central Government of the Republic of China enacted various laws and regulations to abolish the mui tsai and concubinage systems.⁴¹ The social effect of such a dramatic modernisation was however not promising. Rejected by the mui tsai and concubinage system, many poor Chinese women and girls simply found their newly granted ‘liberty and rights’ led them to be outcast of the society. To earn a living, some ended up as streetwalkers in big cities or luckily becoming Yi Taitai (姨太太, a new name for Chinese concubines in Republic of China) of rich and powerful men.⁴² Some contemporary European scholars criticised Chinese legislation as ‘jumping forward’ regardless of the social consequences of such ‘dramatic changes’.⁴³ But for the then Chinese leaders, this dramatic approach of westernisation seemed to be the best way of modernisation. The miseries suffered by the weak and poor were often justified as the unavoidable costs that had to be paid for Chinese progress.

³⁹ A Ho, ‘Quanpan xihua vs. zhongguo benwei—shilun 1930 niandai zhongguo guanyu wenhua jianshe luxiang de lunzhan’ (Wholesale westernisation vs. Chinese centered—An enquiry on Chinese debate in the 1930s about the roadmap of culture construction) 34 *Ershiyi shiji* (The 21st Century), <http://www.cuhk.edu.hk/ics/21c> (accessed 12 October 2011).

⁴⁰ Xianzhong Hao, ‘Jindai zhongyi cunfei zhizheng yanjiu’ (On the Abolishment and Preservation of Modern Chinese Medicine), Ph.D. diss., Department of History, East China Normal University, 2005, p.26.

⁴¹ Section 330 of Criminal Law of the Republic of China (1928) prohibited any form of slavery. In 1927, A Notification of Humanitarian Protection of Women’s Rights was issued by the Home Office of the Republic of China. In 1932, the Home Office issued an Injunction for Domestic Servitude. Chinese Civil Law (1930) abolished Chinese concubinage system.

⁴² Y. Fan, ‘Goujian “xinmin”: Jingying shijiao xia de minguo jinbi yundong’ (Making a New Nation: the Slave-girl Abolition of Republic China from Elite Perspective), 31 *Yunyang shifan gaodeng zhuanke xuexiao xuebao* (*Journal of Yunyang Teachers College*), 2011, pp.78-82.

⁴³ Hong Kong Mui Tsai Committee, *Mui Tsai in Hong Kong*, Hong Kong: Government Printer, 1935, p.289.

China's desperate endeavours to shake off her 'backward feudal traditions and customs' had the symptom of an 'oriental syndrome', which according to oriental theory constitutes 'a too easy acceptance by the East of the image carved for it by the west' and 'a very powerful reinforcement of this in economic, political, and social exchange: the modern Orient, in short, participates in its own Orientalising'.⁴⁴

Nevertheless, the abolition of mui tsai and concubinage put the Chinese government on a highly moral hill. Against this broader international backdrop, the colonial government's pragmatic strategy in preserving Chinese traditional social institutions in Hong Kong became increasingly out of place. Thus despite Governor's warnings and prophesy of the disastrous social cost for the abolition of such institutions, the British Government's robustly negative approach prevailed.

In June 1935, the last Chinese tolerated houses of ill-repute were closed down. Following this, the CD and brothels laws in colonial Hong Kong were literally dead letters. Thus when the Women and Girls' Protection Ordinance no. of 1938 formally repealed all the previous laws, it was only repeal in a symbolic sense. It might not be coincidentally, in the same year of 1938, the mui tsai system was fully replaced by the contract based domestic servant system under the Domestic Servant Ordinance, 1938. And also in the year 1938, the Tung Wah Hospital was transformed into a western medicine dominated hospital.⁴⁵

The subsequent social effect of the abolition of the CD and brothels was as bad as predicted by the colonial government. The incidence of VD among troops soared from 7 per cent in 1922 to 24 per cent in 1938, and a much higher proportion among Chinese population.⁴⁶ A large number of sly brothels sprang up in the Colony, masquerading as dancing academies, bath houses, or massage parlours.⁴⁷ The transformation of mui tsai to paid domestic servants did not really help to improve living conditions of those poor young girls, especially for those had not reached legal working age under the Female Domestic Service Ordinances.⁴⁸ As for Chinese polygamy, perhaps due to Chinese elite's strongest

⁴⁴ N. Rahimieh, *Oriental Responses to the West Comparative Essays in Select writers from the Muslim World* Leiden : E. J. Brill, 1990, p.5; E. Said, *Orientalism*, London: Penguin, 1978, p.325.

⁴⁵ Ho, *Po yu Li*, 2010, pp. 16-17.

⁴⁶ *Report of the Committee constituted in accordance with the directions of H.E. the Governor contained in his letter dated 9 April 1938 in C.S.O.5661/32 at 19*, quoted from Miners, 1984, p. 157.

⁴⁷ Miners, 1984, p.157.

⁴⁸ For instance, before the mui tsai system was abolished, the PLK dealt with many cases related with domestic abuses. After the mui tsai system was replaced by the contract based domestic workers, domestic abusing cases were reduced but the number of discarded baby girls and girls was greatly increased. In the year of 1939, the PLK had to accommodate 1,157 female refugees owing to the abolition of mui tsai system and the Sino-Japanese war. See *The History of Po Leung Kuk, 1878-1968*, pp.55-56, 151, and also N. Miners, 'The Abolition of the Mui Tsai System, 1917 to 1924' in *Hong Kong under Imperial Rule, 1912-1941*, Hong Kong: Oxford University Press, 1987, p.290.

resistance, the colonial government tolerated this particular family tradition until 1971, forty years later than mainland China's abolition of concubinage.⁴⁹

Concluding remarks

Many of the struggles behind legal transplants in colonial Hong Kong can be ultimately ascribed to the conflicts between Chinese and English legal cultures. How to deal with the conflicts between different legal cultures is a difficult question not just confined to colonial Hong Kong but constantly besets the contemporary world.⁵⁰

The colonial government's consistent struggles for a non- or less-orientalist approach in governance though could be criticised as self-interest motivated, but it was nevertheless also an acknowledgement of the contributions of Chinese traditional culture to Hong Kong's prosperity, stability and even the rule of law. If mainland China had taken a less dramatic approach of 'modernisation', we have reason to expect that Chinese customary laws could have lasted longer in colonial Hong Kong, and the social cost for Hong Kong's modernisation and westernisation could therefore have been significantly reduced. As Philippa Levine cogently points out that on an acceptance of British methods and values,⁵¹

'[W]hat Chinese subjects had experienced was of coercion and confusion rather than benefits and advantages. The resistance that their colonial masters took for stubborn traditionalism might better be seen as an eloquent critique of the costs of colonialism and its quest for the modern.'

From the colonial government's non-oriental attitudes towards Chinese traditions and customs, contemporary China should be more confident of the values of their legal tradition. Informed by legal orientalism, if anything further we can learn from Hong Kong's legal history, it might be an ardent encouragement for the Chinese to go back to their own legal culture and tradition. After all, in rejecting the western stereotypes of the Orient requires a clear and coherent presence of eastern cultures. Keeping an open and critical attitude towards their own tradition, avoiding occidental view towards western values and methods are not only essential for the Chinese themselves, but also crucial for fostering an amicable

⁴⁹ For details of the abolition of Chinese customary rules on marriage, concubinage, adoption and succession, see Max Wong, 'The Invention of Tradition or the Politics of Intervention - The Origins of Hong Kong Marriage Reform Ordinance 1971', in *J. of Comparative Law* (forthcoming); For the colonial government's conservative attitudes on the rights of women, see *Chinese Marriages in Hong Kong*, Hong Kong: Government Printer, 1960; *The McDouall-Heenan Report 1965*, Hong Kong: Government Printer, 1965 and Colonial Secretariat, *White Paper on Chinese Marriages in Hong Kong*, Hong Kong: Government Printer, 1967.

⁵⁰ Conflicts between different legal cultures are a part of the clashes of civilizations which, in Huntington's theory constitutes 'the greatest threat to world peace'. S. Huntington, *The Clash of Civilizations and the Remaking of World Order* New York: Simon & Schuster, 1996, at Preface.

⁵¹ Levine, 1998, p.697.

international environment. In this sense, the legacy of Hong Kong's colonial legal history is a story not just for the British, but also for the Chinese and the rest of world.

Appendix 1

List of (Acting) Governors and Administrators (1841-1941)

Names	Dates of Appointment
Sir Henry Pottinger, G.C.B.	26 June 1843
Sir Jonh Francis Davis, Bart	8 May 1844
Sir Samuel George Bonham, G.C.B.	21 March 1848
Sir John Bowring, LL.D	13 April 1854
Sir Hercules Robinson	9 September 1859
Sir Arthur Edward Kennedy, K.C.M.G., C.B.	11 March 1866
Sir John Pope Hennessy, K.C.M.G.	22 April 1877
Sir George Ferguson Bowen, G.C.M.G	30 March 1883
Sir George William Des Voeux, K.C.M.G	6 October 1887
Sir William Robinson, K.C.M.G.	10 December 1891
Sir Henry Arthur Blake G.C.M.G	26 November 1898
Sir Matthew Nathan K.C.M.G.	29 July 1904
Sir Frederick John Dealtry Lugard, K.C.M.G., C.B., D.S.O.	29 July 1907
Sir Francis Henry May G.C.M.G., LL.D.	24 July 1912
Sir Reginald Edward Stubbs, K.C.M.G.	30 September 1919
Sir Cecil Clementi K.C.M.G.,LL.D.	1 November 1925
Sir William Peel, K.B.E.,K.C.M.G.	9 May 1930
Sir Andrew Caldecott, G.C.M.G., O.B.E.	12 December 1935
Sir Geoffry Alexander Stafford Northcote, K.C.M.G.	28 October 1937
Sir Mark Aitchison Young G.C.M.G.	10 September 1941

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No. 5 of 1844	The Good Order and Cleanliness Ordinance, 1844	sections 1 and 3 prohibit various insanitary habits	Sir Henry Pottinger
No.8 of 1844	The Distillation of Spirit Ordinance, 1844	This ordinance prohibits the distillation of spirits unless granted by the government, in order to promote better public order and health	"
No. 14 of 1845	The Summary Offences Ordinance, 1845	This ordinance repeals Ordinance No.5 of 1844. Sections I 1.& 2.&9.&10, III 9 prescribed detailed requirements for proper sanitary behaviours	Sir John Francis Davis
No.8 of 1856	The Buildings and Nuisances Ordinance, 1856	sections 8-10 lays down sanitary requirements for the installation of privies, water-closets and urinals in dwellings	Sir John Bowring
No. 12 of 1856	The Chinese Burials and Nuisances Ordinance, 1856	sections 2-4 & 12 apply the English law of interment to the Chinese community to promote better public health	"
No.12 of 1857	An Ordinance for checking the spread of venereal disease	sections 7 & 8 provide for compulsory medical examination for prostitutes	"
No.8 of 1858	An Ordinance for regulating Chinese people, for the population census, and for other purposes of Police	sections 11 & 12 prohibit unlicensed hawkers and burials	"
No.9 of 1858	The Markets' Ordinance, 1858	sections XIX & XX & XXIV provide regulations for slaughterhouses and unwholesome food	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No. 6 of 1859	The Chinese Passengers' Health Ordinance, 1859	This Ordinance requires the provision of hospital accommodation on board Chinese Passenger ships, and the medical inspection of passengers and crews proceeding to sea in such ships	Sir H. R. Robinson
No.8 of 1866	The Order and Cleanliness Ordinance, 1866	section 8 relates to the banning of pigs in the City of Victoria section 9 relates to unwholesome food section 11 relates to the Governor's appointment of a medical inspector section 12 relates to overcrowded lodging houses	Sir Richard Graves MacDonnell
No. 5 of 1867	The Markets Ordinance, 1867	section V relates to slaughterhouses	"
No.8 of 1867	The Mehomedan Cemetery Ordinance, 1867	According to this ordinance the old cemetery was too full and so a new one was established	"
No.9 of 1867	The Order and Cleanliness Ordinance, 1867	This ordinance repeals Ordinance No. 8 of 1866, and is aimed at promoting better regulation of order and cleanliness in the colony	"
No.10 of 1867	The Contagious Diseases Ordinance, 1867	This ordinance repeals Ordinance No.12 of 1857, and provides for the improved prevention of venereal disease through the imposition of compulsory medical examinations for prostitutes and the strict inspection of brothels used by the European community	"

Ordinance Number	Ordinance Title	Relevant Provisions	Enacted by
No.3 of 1869	The Distillation of Spirit Ordinance, 1869	This ordinance grants licences for the distillation of spirits under certain conditions	Sir Richard Grave MacDonnell
No.1 of 1870	The Wild Birds Ordinance, 1870	Sections I-II Prohibit the killing wild birds	"
No.3 of 1870	The Tung Wah Hospital Ordinance, 1870	This ordinance establishes a Chinese hospital where the application of Chinese traditional medicine is granted	"
No.4 of 1870	Hong Kong Emigration Ordinance, 1870	Section III concerns medical facilities on ships	"
No.8 of 1871	Chinese Passengers Ordinance, 1871	Section V, Schedule B requires the provision of medical facilities on ships	Administrator Henry Whitfield
No.7 of 1872	The Registration of Births and Deaths Ordinance, 1872	The object of this ordinance is to promote public health	Sir Arthur Edward Kennedy
No.10 of 1872	The Nuisances Ordinance, 1872	Sections III and VI regulate sanitary nuisances	"

Appendix 2: Hong Kong's Medical and Sanitary Laws (1844-1941)

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.2 of 1883	The Mehomedan Cemetery Ordinance, 1883	The whole ordinance	Administrator William Henry Marsh
No.7 of 1883	The Order and Cleanliness Amendments Ordinance, 1883	The whole ordinance	Sir George Ferguson Bowen
No.6 of 1884	The Medical Registration Ordinance, 1884	The whole ordinance	"
No.15 of 1885	The Wild Birds and Game Ordinance, 1885	The object of this ordinance is related to public health	"
No.19 of 1885	The Cattle Disease Ordinance, 1885	The whole ordinance	"
No.17 of 1887	The Cattle Disease, Slaughter Houses, and Markets Ordinance	The whole ordinance	Administrator William Gordon Cameron
No.24 of 1887	The Public Health Ordinance, 1887	The whole ordinance	Sir G. William Des Voeux
No.1 of 1888	The Vaccination Ordinance, 1888	The whole ordinance	"
No.4 of 1888	An Ordinance for Prohibiting the Enclosure of Verandahs erected over Crown Lands	Section 1	"
No.14 of 1888	The Trees Preservation Ordinance	This ordinance concerns social impact on public health	"
No.16 of 1888	The European District Reservation Ordinance	The preamble of this document concerns protecting the health of Europeans from the threat of overcrowding by Chinese	"

Appendix 2: Hong Kong's Medical and Sanitary Laws (1844-1941)

Ordinance Number	Ordinance Title	Relevant Provisions	Enacted by
No.15 of 1889	The Buildings Ordinance, 1889	Sections 36-52, 74 and 77 relate to the sanitary requirements of house construction	Sir G. William Des Voeux
No.19 of 1889	The Protection of Women and Girls Ordinance, 1889	Part IV: Lock Hospital and Schedule A repeal compulsory medical checks for women	"
No.23 of 1889	The Crown Lands Resumption Ordinance, 1889	The entire ordinance relates to the resumption and compensation of insanitary housing	"
No.1 of 1890	An Ordinance to appoint an additional member on the Sanitary Board	This ordinance appoints Osbert Chadwick, Esquire, C.M.G., as an additional member of the Sanitary Board	"
No.4 of 1890	An Ordinance to amend <i>The Public Health Ordinance, 1887</i>	Sections 2-3 relate to burial grounds	Administrator, Francis Fleming
No.5 of 1890	The Vaccination Ordinance, 1890	The entire ordinance relates to vaccination	"
No.11 of 1890	The Women and Girls Protection Ordinance, 1890	Schedule A further repeals compulsory medical checks for prostitutes	"
No.12 of 1890	An Ordinance to amend The Cattle Disease, Slaughter-Houses and Markets Ordinance of 1887	Section 3 relates to compensation for the destruction of diseased animals	"
No.16 of 1890	The Waterworks Ordinance, 1890	Sections 17-18 concern waterworks maintenance, water quality, etc.	"
No.23 of 1890	An Ordinance to amend <i>The Cattle Disease, Slaughter-Houses and Markets Ordinance of 1887</i>	Sections 2-5	"
No.26 of 1890	The Public Health Amendment Ordinance, 1890	Sections 1-2 give the Sanitary Board more power to deal with overcrowding and other insanitary problems	"

Appendix 2: Hong Kong's Medical and Sanitary Laws (1844-1941)

Ordinance Number	Ordinance Title	Relevant Provisions	Enacted by
No.11 of 1891	An Ordinance to provide against abuses connected with the erection of Public Latrine	Sections 2-5 give the Sanitary Board power to sanction the erection of latrines	Administrator, G. Digby Barker
No.12 of 1891	The Public Health Amendment Ordinance, 1891	Sections 1-4 relate to the construction of water closets on private premises, and the management of cemeteries	"
No.25 of 1891	The Building (Amendment) Ordinance, 1891	The whole ordinance relates to the sanitary requirements of construction materials	"
No.1 of 1892	An Ordinance to give effect to the change in name and style of the Surveyor General and Surveyor General's Department	In the Preamble the title of Surveyor General and his department are substituted by the titles "Director of the Public Works", "Public Works Department", and "Public Works Office"	Sir William Robinson
No.4 of 1893	The Medical Registration Amendment Ordinance, 1884	The whole ordinance	"
No.9 of 1893	The Dogs Ordinance, 1893	The whole ordinance relates to the prevention of the importation and spread of rabies	"
No.13 of 1893	The Morphine Ordinance, 1893	The whole ordinance relates to the suppression of "the pernicious practice of injecting preparations of morphine by unqualified persons"	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.5 of 1894	An Ordinance to remove doubts as to the validity of certain by-laws made by the Sanitary Board and for other purposes	The whole ordinance is aimed at rectifying the validity of certain by-laws made by the Sanitary Board during the 1894 Bubonic Plague, and increasing the power of the Board	Sir William Robinson
No.8 of 1894	The Taipingshan Resumption Ordinance	This ordinance endows the colonial government with power to resume insanitary houses in Taipingshan district	"
No.15 of 1894	The Closed Houses and Insanitary Dwellings Ordinance	This ordinance greatly increases the power of Sanitary Board to deal with insanitary houses	"
No.4 of 1895	The Public Health Amendment Ordinance, 1895	This amendment modifies the definition of the Common Lodging Houses and the relevant	"
No.5 of 1895	An Ordinance to restrict the immigration of Chinese into the Colony and for other purposes	This ordinance prohibits Chinese to enter the Colony when plague or other contagious diseases are in evidence	"
No.6 of 1895	The Waterworks Amendment Ordinance, 1895	This amendment is aimed at a better control of the water supply	"
No.7 of 1895	The Building (Amendment) Ordinance, 1895	The Director of Public Works is given more power to supervise house constructions and to abate certain sanitary nuisances	"
No.9 of 1895	An Ordinance to confer certain powers and authorities on the Medical Officer of Health	The Medical Officer of Health is appointed to the Sanitary Board to inspect sanitary conditions in dwellings	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.11 of 1895	The Sanitary Committees Ordinance, 1895	The appointment of Sanitary Committees under the Sanitary Board for a more effective enforcement of sanitary measures	Sir William Robinson
No.17 of 1895	An Ordinance to amend The Cattle Diseases, Slaughter House, and Markets Ordinance, 1887	The ordinance stipulates that only government depots are allowed to be swine depots, for the purposes of improving public health	"
No.25 of 1895	An Ordinance to further amend The Cattle Diseases, Slaughter House, and Markets Ordinance, 1887	Passes a penalty for unlawfully bringing animals into slaughter houses without proper inspection, etc.	"
No.5 of 1896	An Ordinance to amend the Building Ordinance, 1896	Related to the supervision of sinking wells within a building or on land	"
No.16 of 1896	The Births and Deaths Registration Ordinance, 1896	The whole ordinance	"
No.18 of 1896	The Sale of Food and Drugs Ordinance, 1896	The whole ordinance	"
No.1 of 1897	The Medical Registration Amendment Ordinance 1897	The Colonial Surgeon is to be an <i>ex officio</i> member of the Medical Board	"
No.4 of 1897	The Vaccination Ordinance, 1897	Related to the registration of children susceptible to small-pox	"
No.8 of 1897	The Government Latrine Ordinance, 1897	The Sanitary Board is given the power to erect public latrines on un-objective locations	"
No.11 of 1897	An Ordinance to change in the name and style of the office of the Colonial Surgeon	This ordinance is concerned with the substitution of the title of Colonial Surgeon by that of Principal Civil Medical Officer	"
No.12 of 1897	Further Amendment to the Ordinance No. 6 of 1884	Sections 2-3	"
No.17 of 1897	The Infected Milk Ordinance, 1897	The Medical Officer of Health is endowed with power to inspect the Diaries and Milk supply	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.19 of 1897	The Waterworks Ordinance, 1897	Related to the limitation of water supply for Chinese houses in Kowloon	Sir William Robinson
No.21 of 1897	<i>An Ordinance to amend The closed houses and insanitary dwellings Ordinance, 1894</i>	This amendment provides a detailed prescription of the limits on the height of buildings located at junctions	"
No.10 of 1898	An Ordinance to further amend <i>The Cattle Diseases, Slaughter Houses, and Markets Ordinance, 1887</i>	Endowing the Sanitary Board with the power to regulate Chinese Coolies who have contracted the disease of rinderpest	Administrator Wilson Black
No.11 of 1898	The Building Amendment Ordinance, 1898	The Director of Public Works is empowered to supervise the connection of private house drains with the Government main sewer	"
No.24 of 1898	The Liquor Licenses Ordinance	Related to the charging of licence fees for Chinese restaurants	"
No.30 of 1898	The Waterworks Ordinances, 1890-1898	Related to a better control of water supply to houses	Henry A. Blake
No.4 of 1899	The Dogs Ordinance Amendment Ordinance, 1899	Related to the enlargement of powers to regulate rabies and to increase the maximum penalty on contravention of dog regulations	"
No.16 of 1899	The Public Health Amendment Ordinance 1899	Section 2	"
No.22 of 1899	An Ordinance to further amend The Cattle Diseases, Slaughter Houses and Markets Ordinance	Reducing the compensation paid by the government for slaughtered cattle and strictly restricting the slaughter of animals to slaughterhouses	"
No.30 of 1899	<i>The Crown Lands Resumption Amendment Ordinance, 1899</i>	Sections 2-5 clarify the definition of Resume, Resumption and Public Purposes	"
No.34 of 1899	The Insanitary Properties Ordinance, 1899	The entire ordinance prescribes detailed requirements for cubicles, building heights, open spaces, etc.	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.2 of 1900	Tung Wah Hospital Extension Ordinance 1900	Establishing a new branch for infectious diseases and the respective power of the Chinese Directors of the Tung Wah and the colonial government over this new branch hospital	Henry A. Blake
No.6 of 1900	The Public Health Amendment Ordinance 1900	This amendment aims at enforcing certain by-laws without the notice issued by the Sanitary Board to the offender (e.g. the by-laws of house lime washing)	"
No.32 of 1900	The Crown Lands Resumption Ordinance 1900	This ordinance endows the government with more power to resume certain lands for any public purposes (e.g. public health purposes)	"
No.11 of 1901	The Civil Medical Staff Discipline Ordinance 1901	The Principal Civil Medical Officer is endowed with the power to punish subordinate members in the Civil Medical Department for misconduct or neglect of duty, etc.	"
No.13 of 1901	The Public Health Ordinance 1901	This ordinance aims to consolidate and amend the laws relating to Public Health in the Colony of Hongkong	"
No.23 of 1901	The Public Health Amendment Ordinance 1901	This ordinance empowers the Sanitary Board to modify the requirements for open space to the rear of each new building	"
No.30 of 1901	The Building Amendment Ordinance 1901	Limiting the number of stories for buildings, forbidding balconies and verandahs for buildings adjacent to the streets	"
No.1 of 1902	The Rats Ordinance 1902	Rats are identified as instrumental in spreading the plague. This ordinance enables such regulations as to control of the number of rats	Administrator W. J. Gascoigne

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.29 of 1902	The Water-works Consolidation Ordinance 1902	This Ordinance is to prevent the waste of water by limiting the quantity used by Chinese inhabitants	Administrator W. J. Gascoigne
No.35 of 1902	The Dogs (Amendment) Ordinance 1902	This Ordinance increases the license fee for dogs	Henry A. Blake
No.42 of 1902	The Chinese Hospital Incorporation Amendment Ordinance, 1902	This Ordinance increases the number of Hospital Directors	"
No.1 of 1903	The Public Health and Buildings Ordinance, 1903	This ordinance consolidates previous sanitary and building ordinances for a better protection of public health	"
No.11 of 1903	The Servants' Quarters Ordinance, 1903	To prevent overcrowding within Servants' living quarters	"
No.15 of 1903	The Live Stock Import and Export Regulation Ordinance, 1903	To prevent cruelty to live stock in transit during import and export	"
No.16 of 1903	The Water-works Ordinance, 1903	To supersede Ordinance No.29 of 1902 and is aimed at introducing a rider-mains system to prevent the waste of water	"
No.23 of 1903	The Public Health and Buildings Amendment Ordinance, 1903	These amendments on building provisions aim at making Ordinance No.1 of 1903 more practicable and enforceable	Administrator F. H. May
No.1 of 1904	The Imbecile Persons Introduction Ordinance, 1904	The government is empowered to charge monies for looking after imbecilic persons	"
No.4 of 1904	The Hill District Reservation Ordinance, 1904	Chinese are not allowed to live in the Hill District for the benefits of the health of Europeans	"
No.9 of 1904	The Tung Wah Hospital (Extension of Powers) Ordinance, 1904	To enable the Tung Wah Hospital to acquire, hold, mortgage and sell land and hereditament in the Colony of Hong Kong	Sir. Matthew A. Nathan

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.15 of 1904	The Imbecile Persons (Amendment) Ordinance, 1904	This Amendment is to clarify that the Ordinance No.1 of 1904 did not apply to native Chinese imbeciles	Sir. Matthew. A. Nathan
No.3 of 1906	The Lunacy Ordinance, 1906	To authorize the establishment of lunatic asylums and the detention of persons of unsound mind	"
No.6 of 1906	The Asylum Ordinance, 1906	To authorize the establishment of asylums to provide custody and care for persons of unsound mind	"
No.9 of 1906	The Lunacy Amendment Ordinance, 1906	To amend a technical error in Section 3 of Ordinance No.3 of 1906	"
No.2 of 1907	The Hongkong College of Medicine Incorporation Ordinance, 1907	To enable the College of Medicine to receive and manage properties	Administrator F. H. May
No.8 of 1907	The Public Health and Buildings (Amendment) Ordinance, 1907	The Sanitary Board is endowed with more power to regulate the issues of open space and cubicles to domestic housing	"
No.12 of 1908	The Pharmacy Ordinance, 1908	This ordinance places power for the dispensing of medicines in the hands of properly qualified persons	Sir. F. D. Luard
No.13 of 1908	The Prepared Opium Amendment Ordinance, 1908	This ordinance is aimed at prohibiting the export of prepared opium to China	"
No.14 of 1908	The Public Health and Buildings Amendment Ordinance, 1908	To change the constitution of the Sanitary Board and amend certain building provisions to be more practicable and enforceable	"
No.11 of 1909	The Public Health and Buildings Amendment Ordinance, 1909	This amendment prescribes detailed requirements of cubicles, the height of buildings and open space, etc.	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.16 of 1909	The Prepared Opium Amendment Ordinance, 1909	This ordinance is to give effect to the restrictions upon the consumption of opium in the Colony of Hong Kong	Sir F. D. Lugard
No.23 of 1909	The Opium Ordinance, 1909	This ordinance objects to a strict control of the sale and consumption of opium in the Colony of Hong Kong	"
No.27 of 1909	The Liquors Ordinance, 1909	For a better control of the sale and consumption of liquors, duties are levied upon intoxicating liquors	"
No.30 of 1909	The Liquors Ordinance Amendment Ordinance, 1909	For a better control of the sale of liquors by levying duties	"
No.38 of 1909	The Christian Burial Ground Ordinance, 1909	To reserve a portion of the Colonial Cemetery for the burial of Protestant members	"
No.2 of 1910	The Liquors Ordinance Amendment Ordinance, 1910	The Colonial Government's privilege on the usage of intoxicating Liquors is not granted by the Home Government	"
No.9 of 1910	The Pharmacy Amendment Ordinance, 1910	This Ordinance provides a procedure for the searching for poisons possessed by unqualified persons	Administrator H. F. May
No.11 of 1910	The Opium Amendment Ordinance, 1910	This Ordinance illegalizes the possession of Morphine or compound of opium unless exempt from this Ordinance	"
No.18 of 1910	The Crown Lands Resumption Amendment Ordinance, 1910	The Amendment simplifies the procedure of lands resumption for public purposes when the value is under \$500	"
No.22 of 1910	The Midwives Ordinance, 1910	This ordinance objects to secure the better training of midwives and to regulate their practice, but does not apply to Chinese	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.24 of 1910	The Lepers Ordinance, 1910	The object is to check the spread of leprosy by providing for the segregation and treatment of the lepers	Administrator F. H. May
No.33 of 1910	The Opium Amendment (No.2) Ordinance, 1910	This amendment imposes restrictions on limited companies for the importation of morphine or opium	"
No.2 of 1911	The Lepers Ordinance Amendment Ordinance, 1911	This amendment prohibits the entry of lepers into the Colony, unless they are His Majesty's subjects.	Sir F. D. Lugard
No.9 of 1911	The Liquor Consolidation Ordinance, 1911	One of the conditions for the granting of a licence to a liquor or eating-house shop is the equipment of a sanitary privy or urine	"
No.20 of 1911	The Food and Drug Ordinance, 1911	This ordinance prescribes that skimmed milk could not be used to feed babies under one year of age	"
No.28 of 1911	The Crown Lands Resumption Amendment Ordinance, 1911	This amendment revises certain rates of compensation for lands resumed for public purposes, including public health	"
No.38 of 1911	The Tung Wah Hospital Extension Ordinance, 1911	Section 5 states that a Chinese medical practitioner trained in Western medicine shall be appointed to the Kwong Wa Hospital	"
No.60 of 1911	The Public Health and Buildings Amendment Ordinance, 1911	This ordinance is concerned with restrictions introduced upon the election of Sanitary Board and height of buildings abutting streets	"
No.3 of 1912	The Births and Deaths Registration Amendment Ordinance, 1912	The principal clerk at Public Dispensary is given the power to register the births, to encourage Chinese to register baby birth	"
No.2 of 1913	The Opium Amendment Ordinance, 1913	To give greater control of the movements of opium and to increase penalties in connection with offences against the law	Governor F. H. May
No.21 of 1913	The Registrar General's (Change of Name) Ordinance, 1913	The title of 'Registrar General' is replaced by that of 'Secretary for Chinese Affairs'	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.2 of 1914	The Pharmacy Ordinance, 1914	This Ordinance includes the provisions for the use of Morphine and Compounds of opium, within the ambit of Pharmacy laws	Sir F. H. May
No.4 of 1914	The Opium Ordinance, 1914	This Ordinance is introduced of a gradual abolishment of the opium trade, in according with international requirements	"
No.5 of 1914	The Cremation Ordinance, 1914	This Ordinance introduces regulations for crematoria	"
No.16 of 1914	The Dentistry Ordinance Ordinance, 1914	This Ordinance sets up a system to protect the public against the practice of incompetent and unqualified dentists	"
No.31 of 1914	The Medical Registration Amendment Ordinance, 1914	To assimilate as far as possible the qualifications entitled for medical registration required in the U.K to the Colony	"
No.15 of 1915	The Dentistry Amendment Ordinance, 1915	This Amendment revises the definition of the 'dental operation' and assimilates the English law to the law of Colony at this point	"
No.9 of 1916	The Pharmacy and Poisons Ordinance, 1916	This Ordinance consolidates the laws relating the regulation of poisons, including morphine and opium etc.	"
No.8 of 1917	The Pharmacy and Poisons Amendment Ordinance, 1917	Warrants issued under this Ordinance do not need to contain the name of the person to whom the warrant is issued	"
No.23 of 1917	The Boarding House Ordinance, 1917	Clauses 4 and 6 lay down sanitary requirements for Boarding Houses	"
No.27 of 1917	The Opium Amendment Ordinance, 1917	This Amendment make it an offence to possess counterfeit labels marks and wrappers used by the colonial government	Administrator Claud Severn
No.1 of 1918	The Coroner's Abolishment Amendment Ordinance, 1918	This Amendment empowered the Magistrate to requisite for a special Jury for the purpose of a death enquiry	Sir F. H. May

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.6 of 1918	The Summary Offences Amendment Ordinance, 1918	Protecting wells and water courses and increasing penalties for the unlawful deposition of building rubbish	Sir F. H. May
No.7 of 1918	The Dangerous Smoking Prevention Ordinance, 1918	This Ordinance introduces a penalty for smoking on board vessels in or alongside any naval dockyard	"
No.8 of 1918	The Peak District (Residence) Ordinance, 1918	This Ordinance stipulates that without the consent of the Governor no person should reside in the Peak District	"
No.3 of 1919	The Summary Offences Ordinance, 1919	Section 20 of the Summary Offences Amendment Ordinance 1918 is repealed so the Contractor is no longer to be responsible for the sanitary offences made by people other than his servants	Administrator Claud Severn
No.7 of 1919	The Births and Deaths Registration Amendment Ordinance, 1919	This Amendment requires the medical certificate to state whether anesthetic has been applied proceeding death	"
No.14 of 1919	The Cheung Chau (Residence) Ordinance, 1919	This Ordinance is modeled on the Peak District Reservation Ordinance in which Chinese are forbidden to reside unless granted permission by the Governor-in-Council	"
No.20 of 1919	The Rice Ordinance, 1919	Sections 7-9 fix the price of rice according to the quality of rice	"
No.22 of 1919	The Places of Public Entertainment Regulations Ordinance, 1919	Clause 6a (4) and (5) relates to sanitary requirement for the places of public entertainment	Sir. F. H. May
No.9 of 1920	The Public Health and Buildings Ordinance, 1920	This Ordinance reduced the statutory minimum height of buildings (in stories) in order to lessen the cost of buildings	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.11 of 1920	The Plants Ordinance, 1920	The object is to protect trees, shrubs and other plants in the Colony which has an indirect impact on HK's public health	Sir R. E. Stubbs
No.14 of 1921	The Crown Lands Resumption Ordinance, 1921	This Ordinance abolishes the ten percent allowance for compulsory acquisition and provides new standards of compensation for land resumed for public purposes	"
No.6 of 1922	The Opium Amendment Ordinance, 1922	This Amendment clarified that smoking in an opium divan was an offence, and further assumed certain places to be opium divan until the contrary was proved	"
No.15 of 1922	The Wild Birds Ordinance, 1922	This Ordinance aims to improve the protection of wild birds and game which has an indirect impact on public health in HK	Administrator Claud Severn
No.16 of 1922	The Recreation Grounds Amendment Ordinance, 1922	This Amendment aims to give power to apply the surplus revenue derived from the Chinese Recreation Ground to other charitable purposes say the Maternity hospital for Chinese	"
No.2 of 1923	The Medical Registration Amendment Ordinance, 1923	This Amendment enables the Governor-in-Council to remove unqualified persons from the Medical Register	Sir R. E. Stubbs
No.12 of 1923	The Vaccination Amendment Ordinance, 1923	The object of this amendment is to improve the vaccination system by requiring vaccination for emigrants and supervise public vaccinators	"
No.22 of 1923	The Dangerous Drugs Ordinance, 1923	This Ordinance intends to rectify the International Opium Convention signed at Hague in 1912 relating to dangerous drugs other than opium	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.26 of 1923	The Births and Deaths Registration Amendment Ordinance, 1923	To amend and simplify the law relating to the registration of Births and Deaths contained in Ordinance No. 7 of 1896	Sir R. E. Stubbs
No.30 of 1923	The Opium Ordinance, 1923	This legislation abolishes the assumption of the existence of an entrepot trade in raw opium in HK and offers greater power to control the illegitimate dealings in opium	"
No.10 of 1924	The Summary Offences Amendment Ordinance, 1924	Section3 imposes punishment for unlawful possession of opium, dangerous drugs in shipping	"
No.12 of 1926	The Midwives Amendment Ordinance, 1926	Aimed at preventing the use of titles, etc., by uncertified Chinese midwives	Sir Cecil Clementi
No.6 of 1927	The Public Health and Buildings Amendment Ordinance, 1927	This ordinance amends three points: Sanitary Board Election; reinforced concrete buildings and water closets	"
No.11 of 1927	The Asylums Amendment Ordinance, 1927	This amendment objects to clarify the procedure required for the admission of patients to mental asylums, and to ensure the notification of the patients' relatives for such removal	"
No.20 of 1927	The Medical Registration Amendment Ordinance, 1927	To deal with the powers and procedure of the Medical Board, to transfer the medical register from the Colonial Secretary to the Principal Civil Medical Officer, and to exempt Professors at Medical Faculty from the registration	Administrator W. T. Southorn
No.21 of 1927	The Dog's Amendment Ordinance, 1927	This amendment strengthens the regulation of the Dog licensing system in order to allow a better control of rabies	"

Appendix 2: Hong Kong's Medical and Sanitary Laws (1844-1941)

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.4 of 1928	The Dangerous Drugs Amendment Ordinance, 1928	The object of this amendment is to enact legislation required to give effect in HK the International Convention on Opium and Dangerous Drugs as signed in Geneva on 19 th Feb.1925 and to rectify various loop-holes in the Principal Ordinance of 1923	Sir C. Clementi
No.5 of 1928	The Principal Civil Medical Officer (Change of Name) Ordinance, 1928	The title 'Principal Civil Medical Officer' is replaced by the title of Director of Medical and Sanitary Services	"
No.9 of 1928	The Dentistry Amendment Ordinance,1928	The power of supervising dentistry is transferred from the Colonial Secretary to the Director of Medical and Sanitary Services	Administrator W. T. Southorn
No.19 of 1928	The Public Health and Buildings Amendment Ordinance,1928	To deal with departmental matters, to prohibit the sale of unwholesome food in the Hill District and to prescribe the responsibilities of building owners	"
No.20 of 1928	The Pharmacy and Poisons Amendment Ordinance, 1928	The power of supervising poisonous drugs is transferred from the Colonial Secretary to the Director of Medical and Sanitary Services	"
No.12 of 1929	The Waterworks Amendment Ordinance, 1929	This amendment increases the penalty for the waste and pollution of water in view of controlling water consumption in droughts	Sir C. Clementi
No.29 of 1929	The Liquors Amendment Ordinance, 1929	This amendment provides a new system of charging and collecting duty on spirits, which has an indirect impact on Hong Kong's public health	"
No.30 of 1929	The Public Health and Buildings Amendment Ordinance,1929	The Director of the Medical and Sanitary Services is appointed as a member of the Sanitary Board and the definitions of 'front' and 'abut' are clarified in the case of buildings near streets	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.33 of 1929	The Crown Lands Resumption Amendment Ordinance, 1910	This amendment fixes a period after which the interest will not run with the compensation	Sir C. Clementi
No.3 of 1930	The Opium Amendment Ordinance, 1930	This amendment introduces the new concepts of exporting and importing of Opium in line with the Dangerous Drugs Ordinance 1923 and its amendment of 1928	"
No.18 of 1930	The Public Health and Buildings Amendment Ordinance, 1930	This amendment restores the Medical Officer of Health as a member of the Sanitary Board, in place of the Director of Medical and Sanitary Services	Sir W. Peel
No.27 of 1930	The Crown Lands Resumption Amendment Ordinance, 1911	This amendment simplified the procedure for the resumption of land required for public purposes, including public health	"
No.31 of 1930	The Tung Wah Hospital Ordinance, 1930	This ordinance clarifies the membership of the Tung Wah Hospital and further defines the respective duties and powers of the Tung Wah and its branches	"
No.1 of 1931	The Nurses Registration Ordinance, 1931	This ordinance follows the English Nurses Registration Act 1919 which provided for the registration of nurses	"
No.3 of 1931	The Public Health and Buildings Amendment Ordinance, 1931	This amendment deals with the sale, possession, inspection, seizure and destruction of unwholesome food	"
No.12 of 1931	The Vaccination Amendment Ordinance, 1931	This amendment reduces the period of grace for unvaccinated children from 6 months to 6 weeks for the benefit of public health	"
No. 18 of 1931	The Public Health and Buildings Amendment (No.2) Ordinance, 1931	This amendment revises the government's payment of compensation for the slaughter of infected animals	"
No.26 of 1931	The Births and Deaths of Registration Amendment Ordinance, 1931	This amendment assigns the duty of Registrar General of Births and Deaths to the Director of the Medical and Sanitary Services	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.8 of 1932	The Medical Registration Amendment Ordinance, 1932	This amendment adds provision for a Chairman of the Medical Board and enables the Board to make Standing Orders	Administrator W. T. Southorn
No.12 of 1932	The Births and Deaths Registration Amendment Ordinance, 1932	This amendment prohibits the entering of lepers into this Colony that are not being subjects of His Majesty	"
No.30 of 1932	The Waterworks Amendment Ordinance, 1932	This amendment abolishes the Rider-Mains system of water supply which produces great inconvenience for the daily life of Chinese community in general	"
No.31 of 1932	The Dangerous Drugs Ordinance, 1932	This ordinance is to enforce the Geneva Convention 1931 (No.2) which illegalizes the dangerous drugs extracted from opium etc which are capable of producing addiction	"
No.36 of 1932	The Opium Amendment Ordinance, 1932	This amendment is to enforce the Geneva Prepared Opium Agreement of Feb 1925 which aims to make the smoking of opium more difficult	"
No.40 of 1932	The Summary Offences Ordinance, 1932	Section 4 deals with scavenging and conservancy, Section 23 deals with drunkenness	Sir W. Peel
No.25 of 1933	The Miscellaneous Licenses Ordinance, 1933	Part IV and VIII under the Second Schedule to this Ordinance are relevant with public health regulation	"
No.7 of 1934	The Opium Amendment Ordinance, 1934	This amendment penalizes persons who sublet the floor or room as opium divans	"
No.17 of 1934	The Summary Offences Amendment Ordinance, 1934	This amendment allows Chinese to erect scaffolding of bamboo or wood for the removal of dead on certain conditions	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.21 of 1934	The Births and Deaths Registration Ordinance, 1934	This ordinance repeals previous relevant ordinances in a consolidated form to encourage Chinese to register births etc.	Sir W. Peel
No.22 of 1934	The Coroner's Abolishment Amendment Ordinance, 1934	This amendment provides an up-to-date enactment, following English law, for a better procedure of inquests and post-mortems	"
No.40 of 1934	The Cremation Ordinance, 1934	This ordinance repeals the Cremation Ordinance of 1914 and empowers the Governor by order to choose the crematoria site	"
No.1 of 1935	The Asylums Amendment Ordinance, 1935	This amendment gives the Governor more power to remove unsound prisoners to lunatic asylums	"
No.2 of 1935	The Public Health and Buildings Amendment ordinance, 1935	This amendment imposes a charge on householders for the removal of night-soils	"
No.6 of 1935	The Tung Wah Hospital Amendment Ordinance, 1935	This amendment gives the Governor the power to appoint a sufficient number of temporary Directors	"
No.7 of 1935	The Urban Council Ordinance, 1935	This ordinance provides for the replacement of the Sanitary Board by an Urban Council for a better public health administration	"
No.8 of 1935	The Adulterated Food and Drugs Ordinance, 1935	This ordinance closely follows the Sale of Food and Drugs Enactment of 1913 of the Federated Malay States which is to more effectively safeguard the public with regard to food quality	"
No.9 of 1935	The Boarding-house Amendment Ordinance, 1935	This ordinance forms a part of the new Sanitation Code which regulates such houses known to Chinese as 'Ku li Kun'	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.11 of 1935	The Liquor Consolidation Ordinance, 1911	This ordinance absorbs suggestions from the Secretary of State regarding better control and regulation of intoxicating liquors	Sir W. Peel
No.12 of 1935	The Public Health (Quarantine and Prevention of Disease) Ordinance, 1935	This new ordinance provides an up-to-date code for the quarantine and prevention of disease among human beings	"
No.13 of 1935	The Public Health (Food) Ordinance, 1935	This ordinance replaces food provisions No.1 of 1903 and the by-laws made thereunder	"
No.15 of 1935	The Public Health (Sanitation) Ordinance, 1935	This ordinance contains all the provisions of No.1 of 1903 together with certain provisions of other legislations which are considered suitable to group under sanitation	"
No.16 of 1935	The Public Health (Animals and Birds) Ordinance, 1935	This ordinance provides an up-to-date code for the control and prevention of disease among animals and birds	"
No.18 of 1935	The Buildings Ordinance, 1935	Certain buildings provisions under this ordinance have a close relation with issues of public health	"
No.21 of 1935	The Jury Amendment Ordinance, 1935	This amendment implements Section 3 (4)(j) of the Urban Council Ordinance No.7 of 1935	"
No.22 of 1935	The Hawkers Ordinance, 1935	This ordinance transfers to the Urban Council the licensing and general regulation of hawkers licensed under No. 25 of 1933	"
No.25 of 1935	The Lepers Ordinance, 1935	This ordinance regards a leper settlement or asylum as a centre for treatment rather than a prison	Administrator W. T. Southorn
No.35 of 1935	The Dangerous Drugs Ordinance, 1935	Ordinance No.31 of 1932 is re-enacted and this new ordinance incorporates model clauses instructed by the Home Government	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.41 of 1935	The Medical Registration Ordinance, 1935	To consolidate and amend medical ordinances and regulations	Administrator N. L. Smith
No.7 of 1936	The Quarantine and Prevention of Disease Ordinance, 1936	This Ordinance is enacted under the suggestions of British Minister of Health in line with English law	Sir. A. Caldecott
No.21 of 1936	The Midwives Amendment Ordinance, 1936	This amendment extends Western style midwives into the Chinese community	"
No.22 of 1936	The Asylums Ordinance, 1936	This ordinance consolidates laws relating to asylums and the detention, custody and care of persons of unsound mind	"
No.29 of 1936	The Pleasure Grounds and Bathing Places Regulation Ordinance, 1936	This ordinance provides regulations for a better supervision of bathing places for public sanitation and safety	"
No.37 of 1936	The Public Health (Sanitation) Amendment Ordinance, 1936	This amendment extends the Principal Ordinance of 1935 to the whole Island of Hong Kong instead of the City of Victoria	"
No.38 of 1936	The Public Health (Animals and Birds) Amendment Ordinance, 1936	This amendment grants a right of appeal to the Governor to any person dissatisfied with the decision made by the government	"
No.39 of 1936	The Public Health (Food) Amendment Ordinance, 1936	This amendment redefines the definition of 'dairy' products and improves unwholesome food supervision	"
No.46 of 1936	The Director of Medical and Sanitary Services (Change of Name) Ordinance, 1936	The title 'Director of Medical and Sanitary Services' is replaced by the title 'Director of Medical Service'	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.48 of 1936	The Nursing and Maternity Homes Registration Ordinance, 1936	This ordinance is to provide for the registration of Nursing Homes and Maternity Homes in line with English law	Sir A. Caldecott
No.49 of 1936	The Midwives Amendment Ordinance, 1936	This ordinance imposes a fee on registered midwives for a better regulation of the profession of midwife	"
No.52 of 1936	The Cremation Amendment Ordinance, 1936	This amendment adds requirements for the site of crematoria	"
No.54 of 1936	The Quarantine and Prevention of Disease Amendment Ordinance, 1936	This amendment amends the list of 'infectious diseases'	"
No.7 of 1937	The Public Health (Sanitation) Amendment Ordinance, 1937	This amendment classifies Malarial Inspector under the term Malariologist	Administrator N. L. Smith
No.8 of 1937	The Pharmacy and Poisons Ordinance, 1937	This ordinance appeals the Ordinance No.16 of 1916, and closely follows the Pharmacy and Poisons Act, 1933, in Britain	"
No.11 of 1937	The Forestry Ordinance, 1937	This ordinance provides for better protection of trees and plants, which has an indirect but important impact on public health	"
No.4 of 1938	The Vaccination Amendment Ordinance, 1938	This amendment provides compulsory vaccination to prevent a virulent type of smallpox then in prevalence	Sir G.A.S. Nothcote
No.10 of 1938	The Dentistry Amendment Ordinance, 1938	The Director of Medical Services is empowered to remove certain dentists from the Dental Register	"
No.17 of 1938	The Dangerous Drugs Amendment Ordinance, 1938	This ordinance prohibits the smoking of heroin	"
No.18 of 1938	The New Territories Regulation Amendment Ordinance, 1938	This ordinance extends certain provisions of the Public Health (Sanitation) Ordinance, 1935, to be applied to the New Territories	"

Ordinance Number	Ordinance Title	Legislative Objects and Relevant Provisions	Enacted by
No.20 of 1938	The Waterworks Ordinance, 1938	This ordinance is enacted on the assumption that there would be no free allowance of water, except in hospitals and other permitted institutions	Sir G.A.S. Nothcote
No.24 of 1938	The Pharmacy and Poisons Amendment Ordinance, 1938	This ordinance imposes restrictions on the possession of poisonous drugs	"
No.20 of 1939	The Town Planning Ordinance, 1939	This ordinance provides for a systematic preparation for the future lay-out of urban area for the promotion of health, safety and general welfare for the Hong Kong community	"
No.34 of 1939	The Births and Deaths Registration Amendment Ordinance, 1939	To encourage the early registration of births by imposing a fee on those registering more than two weeks after the birth	"
No.35 of 1939	The Urban Council Amendment Ordinance, 1939	To appoint Director of Medical Services as the Vice Chairman of and professional adviser to the Urban Council	"
No.1 of 1940	The Registration of Dentists Ordinance, 1940	This ordinance introduces a comprehensive enactment regulating the profession of Dentistry by replacing all previous relevant laws	"
No.10 of 1940	The Summary Offences Amendment Ordinance, 1940	To regulate the habit of indiscriminate spitting for the prevention of Tuberculosis	"
No.5 of 1941	The Medical Registration Amendment Ordinance, 1941	To enhance the power of the Medical Board to supervise various medical practitioners	Administrator E. F. Norton
No.12 of 1941	The Buildings Amendment Ordinance, 1941	To provide provisions for the Chairman of the Urban Council to supervise certain non-domestic buildings for sanitary purpose	Sir. Mark Young
No.16 of 1941	The Public Health (Sanitation) Amendment Ordinance, 1941	Clauses 2 and 3: recovery payment of night-soil collection paid by departmental system under the Urban Council	"
No.17 of 1941	The Midwives Amendment Ordinance, 1941	To increase the number of personnel on the Midwives' Board	"

Appendix 3

Population of Hong Kong (1900-1940)¹

Year	Chinese	Non-Chinese	Army	Naval	Chinese Refugees	Total
1900	268,610	9,130	2,568	3,110		283,418
1901 Census	280,564	9,560	5,462	5,074		300,660
1902	293,300	9,816	4,204	4,504		311,824
1903	307,050	10,080	4,401	4,100		325,631
1904	342,306	10,181	4,359	4,360		361,206
1905	359,873	10,452	4,274	3,251		377,850
1906	306,130	12,174	3,959	4,698		326,961
1906 Census	307,388	12,415	4,537	4,698		329,038
1907	310,580	12,700	3,920	2,157		329,357
1908	316,450	13,200	4,483	2,355		336,488
1909	323,160	14,000	4,500	2,217		343,877

¹ All data are obtained from Reports of the Medical Officer of Health, The Sanitary Surveyor, and the Colonial Veterinary Surgeon, for the year 1900 pp.396-397; Reports of the Medical Officer of Health, The Sanitary Surveyor, and the Colonial Veterinary Surgeon, for the year 1901 p.523; Reports of the Medical Officer of Health, The Sanitary Surveyor, and the Colonial Veterinary Surgeon, for the year 1902 p.78; Reports of the Medical Officer of Health, The Sanitary Surveyor, and the Colonial Veterinary Surgeon, for the year 1903, p.306; Reports of the Medical Officer of Health, The Sanitary Surveyor, and the Colonial Veterinary Surgeon, for the year 1904,p.28; General Report of the Principal Civil Medical Officer and the Medical Officer of Health, for the year 1905,p.260; General Report of the Principal Civil Medical Officer and the Medical Officer of Health for year 1906,p.389; General Report of the Principal Civil Medical Officer and the Medical Officer of Health for year 1906,p.388; General Report of the Principal Civil Medical Officer and the Medical Officer of Health for year 1907,p.397; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1908,p.3; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1909,p.6; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1910,p.4; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1911,p.10; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1912,pp.9-11; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1913,pp.11-12; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1914,pp.11-12; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1915,p.9; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1916,p.10; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1917,p.9; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1918,p.11; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1919,p.9; Joint Report of the Principal Civil Medical Officer and the Medical Officer of Health for the Year 1920,pp.11-12; Report of the Medical Officer of Health in Sanitary Report for the Year 1921,p.36; Report of the Medical Officer of Health in Sanitary Report for the Year 1922,pp.40-41; Report of the Medical Officer of Health in Sanitary Report for the Year 1922,pp.40-41;Medical Report for the Year 1922,p.6; Report of the Medical Officer of Health in Sanitary Report for the Year 1923,p.41; Report of the Medical Officer of Health in Sanitary Report for the Year 1924,p.37; Report of the Medical Officer of Health in Sanitary Report for the Year 1925,p.39; Report of the Medical Officer of Health in Sanitary Report for the Year 1926,p.45; Report of the Medical Officer of Health in Sanitary Report for the Year 1927,p.39; Report of Medical Department for the Year 1928,p.20; Medical and Sanitary Report for the Year 1929,p.27; Medical and Sanitary Report for the Year 1931,p.35; Medical and Sanitary Report for the Year 1931,p.35; Medical and Sanitary Report for the Year 1932,p.26; Medical and Sanitary Report for the Year 1933,p.28; Medical and Sanitary Report for the Year 1934,p.29; Medical and Sanitary Report for the Year 1935,p.28; Medical and Sanitary Report for the Year 1936,p.29; Report of the Medical Department for the Year 1937,p.10; Report of the Medical Department for the Year 1938,p.12; Report of the Director of Medical Services for the Year 1939,p.7 and p.18; and, Report of the Director of Medical Services for the Year 1940,p.12.

Year	Chinese	Non-Chinese	Army	Naval	Chinese Refugees	Total
1910	329,920	14,260	4,433	2,362		350,975
1911 Census	444,664 (90,594) ²	12,075	2,360	2,313	20,000	464,277
1912	446,614	12,075	2,360	2,313	40,000-50,000	467,777
1913	467,644	13,025	6,345	2,100	50,000-60,000	489,114
1914	445,300	13,000	43,004		60,000 left fearing HK's bombardment	501,304
1915	521,600	13,500				535,100 civil
1916	515,620	13,390			120,000	529,010
1917	521,600	13,500				535,100
1918	548,000	13,500				561,500
1919	584,500	13,600			65,238 immigrants	598,100
1920	634,150	14,000			43,932 emigrants	648,150
1921	672,580	14,100				686,680
1921 Census						625,166
1922	647,000	15,200				662,200
1923	666,300	15,500				681,800
1924	783,550	16,000				799,550
1925	857,920	16,500				874,420
1926	857,920	16,500				874,420
1927	961,400	16,500				977,900
1928	1,057,540	18,150				1,075,690
1929	1,125,000	18,150				1,143,510
1930	838,300	19,000				857,300
1931 Census	821,104	19,369				840,473
1932	880,812	20,000				900,812
1933	902,197	20,446				922,643
1934	923,584	20,908				944,492
1935	944,971	21,370				966,341
1936	966,358	21,832				988,190
1937	984,400	22,584			250,000- 300,000	1,006,984
1938	1,005,532	23,096			500,000- 600,000	1,028,619
1939	1,026,645	23,611			1,000,000	1,050,256
1940	856,798	18,723			900,000	875,521

² The census of 1911 included the residents of the New Territories, the population of which is in brackets.

Bibliography¹

Primary sources

Manuscripts

Official records from the National Archives, London

CO129: Hong Kong Original Correspondence, 1841-1951

This series is the basic empirical source for this study, but any CO documents beyond 1941 were not investigated in any depth. Bound volumes (1841-1925) are arranged chronologically. Each volume is provided with a contents list where one can quickly identify and locate a relevant file. Files in CO129 often include the draft of replies, minutes by Colonial Office staff on incoming correspondence and occasional memorandums. From 1926 onwards correspondence is arranged in subject files. The quickest way to find a relevant file after 1926 is to consult the printed version of CO 129 index.

This study pays special attention to the replies and Colonial Officers' minutes which recorded the decision-making process of the Colonial Office before sending formal instructions to the Colonial Government.

CO130: Hong Kong Acts, 1844-1965

This series constitutes another major source for this thesis. From the earliest to the last before the SWW, all enacted public health laws can be found here. However, draft bills are not contained in this series. In addition, the Acts collected in early volumes were handwritten. All the same Acts including the bills are available in the Hong Kong Government Gazette (which will be commented below).

On the social historical background and also the deliberative process of the public health laws, this series only offers very limited information.

CO131: Sessional Papers from Hong Kong, 1844-1966

The minutes of the proceedings of Executive Council and Legislative Council, and the various government reports contained in this series are of great value to this study. The proceedings of Executive Council contain valuable information on the decision-making dimension of Colonial Government's public health policies, while the proceedings of Legislative Council (especially after the year 1858) record the deliberative process of each important public health ordinance. Some series of government reports furnish this study

¹ This is a Bibliography of works consulted in the text and all works referred to in the text are included.

general but vivid social, historical and economic background of Hong Kong between 1841 and 1941. In sum, this series efficiently provides the historical settings of the enactment and implementation of each important public health ordinance.

CO132: Hong Kong Government Gazettes, 1846-1990

This series was frequently visited in this study mainly for three purposes: for copies of public health ordinances, bills, bylaws and regulations from 1846 to 1941, copies of proceedings of the Legislative Council from 1846 to 1941, and copies of proceedings of the Sanitary Board from 1883 to 1935. Some reports and government notifications published in the gazettes also contain useful information as regards to the implementation of public health laws.

CO133: Hong Kong Miscellanea 1844-1940

This series comprises blue books of statistics and trade and shipping returns. This study occasionally consults the statistics of population and government revenues and expenditure contained in the blue books.

CO349: Hong Kong Register of Correspondence, 1849-1952

Useful for a quick survey and for the occasional summary of an item marked with the dreaded (to the committed researcher) 'destroyed under statute'.

CO403: Hong Kong Entry Books, 1843-1872

This series contains 21 volumes entry books of letters from the Secretary of State, Offices and Individuals relating to Hong Kong.

CO489: Hong Kong Register of Out-letters, 1842-1926

This series contains registers of out-letters relating to Hong Kong.

FO17: General Correspondence before 1906, China

This series contains general correspondence relating to China. Although it also includes some formal despatches to Hong Kong government, the contents of these despatches are on political, commercial and consular relations with Chinese governments rather than internal business of Hong Kong.

FO228: Consulates and Legation, China: General Correspondence, 1834-1930

FO233: Consulates and Legation, China: Miscellaneous Papers and Reports, 1727-1951

Three volumes under FO233 are of particular interest for this study: FO233/185, FO233/186

and FO233/187. They contain communications between Sir John Francis Davis' Colonial Government and Chinese Authorities, translated proclamations and notifications and Chinese petitions to the Colonial Government. The contents of all the three volumes are in Chinese text.

Private records from the Tung Wah Museum, Hong Kong

For a detailed introduction to the Tung Wah's archives please see Elizabeth Sinn, "Materials for Historical Research: Source Materials on the Tung Wah Hospital 1869-1941—the Case of a Historical Institution," in Alan Birch et al., ed., *Research Materials for Hong Kong Studies*. Hong Kong: Centre of Asian Studies, Univ. of Hong Kong, 1984, pp.195-223. The following archival materials are used in this study.

Tung Wah dongshiju huiyi jilu (东华董事局会议记录, minutes of meetings of the Tung Wah Hospital), 1903-1955, 1958-1966

Minutes of the Proceedings of the Meetings of the Medical Committee of Tung Wah Group of Hospitals (1938-1941) (in English).

Gaishan Tung Wah sanyuan yuanwu huiyilu (改善东华三院院务会议录 Minutes of meetings on the improvement of administration of the Group), 1933-1934

Annual Reports (院务报告书) , 1930s-1940s

Bilingually, this report has more information on the Tung Wah's medical work, especially western medicine.

Huamin zhengwusi laixin/ fuhuadao laixin (华民政务司来信/抚华道来信 letters from the Registrar-General/Secretary for Chinese Affairs), 1910-1925

Huamin xinbu (华民信簿 letters to the Secretary for Chinese Affairs) , 1918-1952

Zhengxinlu(征信录, annual reports), 1873-1935

The very detailed and comprehensive records here are invaluable in showing the work of the hospital in almost 'microscopic' terms. Moreover, statistics on wages, rents and a wide range of prices, on destitutes and so much more, throw light upon the economic and social conditions of Hong Kong during any one year. The financial accounts, however, are comparatively brief.

Xianggang Tung Wah yiyuan guize (香港东华医院规则 Rules and Regulations of the Tung Wah Hospital)

This gives some ideas of how the Hospital had been expected ideally to run.

Published materials

British Parliamentary Papers

Some of the British Parliamentary Papers from the period 1841 to 1941 have been consulted in this study. Although much of the information contained in the parliament papers were derived from the CO and FO series, it is more convenient to read the papers than the manuscripts for two reasons: the papers are printed while some despatches in the CO series were in handwriting and were not always easy to read, secondly, the papers are subject grouped, while in CO series, one has to identify relevant subject files by oneself. It should be pointed out that the British Parliamentary Papers used in this study can be accessed through the digitised parliamentary papers database: <http://parlipapers.chadwyck.co.uk/marketing/index.jsp> (accessed from the years 2009-2011).

1847 (743) Mr. Montgomery Martin. Copy of correspondence of Mr. Montgomery Martin with the Secretary of State for the Colonies, relating to his resignation of the office of Treasurer of Hong Kong.

1866(149) Report on the Sanitary conditions of Hong Kong and Kowloon (e-copy of this report is not available yet in the parliamentary paper database. A printed copy of this report can be found in: "Correspondence, dispatches, reports, returns, memorials and other papers respecting the affairs of Hong Kong 1862-1881," in *British Parliamentary Papers: China* Vol.25, Shannon: Irish University Press, 1971 pp.135-163.)

1878-79 [C.2438] Hong Kong. Papers relating to the flogging of prisoners in Hong Kong.

1880 (118) Hong Kong, 1878 (contagious diseases ordinance). Copy of report of the commissioners appointed by His Excellency John Pope Hennessy, C.M.G., Governor and Commander in Chief of the colony of Hong Kong and its dependencies, to inquire into the working of the Contagious Diseases Ordinance, 1867.

1881 [C.3093] Hong Kong. Correspondence relating to the working of the contagious diseases ordinances of the colony of Hong Kong.

1881 (426) Hong Kong (restrictions upon the Chinese). Return to an address of the Honourable the House of Commons, dated 26 July 1881;--for, "copy or extracts of any despatches from the Governor of Hong Kong in 1877 and in 1881 respecting restrictions laid upon the Chinese merchants, with a view of reserving the central portion of the town of Victoria for English and foreign firms;" "and, of copy or extracts of despatches respecting the attempts made to drive out the Chinese by regulations as to Chinese graves, sanitation, and the compulsory publication of Chinese partnerships."

1882 (79) Hong Kong. Copy or extracts of further correspondence regarding the sanitary condition of Hong Kong, and alleged restrictions upon Chinese (in continuation of the return to the address of the Honourable the House of Commons, dated the 26th day of July 1881. H.C. 426).

1882 [C.3387] Hong Kong. Further correspondence on the sanitary condition of Hong Kong. (In continuation of H.C. 426, August 1881, and H.C. 79, February 1882.)

1894 [C.7461] [C.7545] Hong Kong. Correspondence relative to the outbreak of bubonic plague at Hong Kong.

1896 [C.8119] Colonial reports—Miscellaneous, No. 6. Hong Kong, Bubonic Plague.

Archival publications on British public health

- Chadwick, Edwin (1842) *Report ... from the Poor Law Commissioners: on an inquiry into the sanitary condition of the labouring population of Great Britain; with appendices*. London: W. Clowes and Sons.
- (1887) *National Gains by Sanitation*. [London] publication.
- (1888a) *Preventive Legislation as against Curative Legislation*. [S.L.] publication.
- (1888b) *Errors of local administration: presidential address ... at the annual meeting of the Association of Public Sanitary Inspectors ...* London publication.
- (1888c) *Sanitary Sewage and Water Supply*. London publication.
- (1890) *National Health*. London: Longmans, Green.
- Dodd, J. Theodore (1891) *The Housing of the Working Class*. London publication.
- Kensington & Chelsea, Public Health Committee (1901) *Report on the Housing of Working Classes*. [S.L.] publication
- National Housing and Town Planning Council (1929) *A Policy for the Slums: being the report of a special committee appointed by the National housing and town planning council*. London: P. S. King & son, ltd.

Edited series of Tung Wah Museum Archives, five volumes

- Ho, Puiyin (2009a) *Shi yu Shou: cong jiji dao dingqi fuwu (Giving and Receiving: from emergent relief to periodic services)*, Vol. 2, Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- (2009b) *Yuan yu Liu: Dongwa yiyuan de chuangli yu yanjin (Source and Stream: the establishment and evolvement of the Tung Wah Hospital)*, Vol. 1, Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- (2010a) *Chuan yu Cheng, Cishan fuwu rongru shequ (Spreading and Succession: welfare services go into community)*, Vol.5, Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- (2010b) *Po yu Li: Donghua sanyuan zhidu de yanbian (Deconstruction and Reconstruction: the development of the Tung Wah Three Hospitals)*, Vol.4, Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- Yip, Hon-ming (2009) *Donghua yizhuang yu huanqiu cishan wangluo: dang'an wenxian ziliao yinzheng yu qishi (Tung Wah Coffin House and Its Global Charitable Networks: the evidence and inspirations from Tung Wah Archives)*, Vol.3, Xianggang: Sanlian shudian (Xianggang) youxian gongsi.

Po Leung Kuk

Xianggang Baoliangju shilüe bianji xiaozu weiyuanhui (1968) *Xianggang Bao liang ju shilüe : chuang ju 90 zhou nian*, Xianggang: Baoliangju

Online database of Hong Kong public records

In addition to the U.K based National Archives and British Parliament digitised papers, the following electronic database located in Hong Kong are also of considerable valuable. Theoretically, all the following digitised official publications can be traced in the series of CO129-132. However, although the online databases provide information in chronological sequence, there exist some gaps. In other words, they are not as complete as the manuscripts preserved in the National Archives. Nevertheless, from practical point of view, these online databases provide useful and convenient complements to the materials in the National Archives, especially for local researchers who cannot easily travel to London to read the original manuscripts.

1. Hong Kong Government Reports Online (1842-1941) is a full-text image database launched by the University of Hong Kong: <http://sunzi.lib.hku.hk/hkgro/index.jsp> (visited between 2008 and 2015). This database provides online access to pre-World War II issues of four major government publications, namely, Administrative Report (1879-1939, with gaps), Hong Kong Sessional Papers (*SP*, 1884-1940), Hong Kong Hansard (*HKH*, 1890-1941) and Hong Kong Government Gazette (*HKGG*, 1842-1941, the years of 1849-1852 are wanting).
2. Hong Kong Blue Books online (1844-1938, the years of 1848, 1859-1861 are wanting) prepared by the Chinese University of Hong Kong: <http://elearn9.itsc.cuhk.edu.hk/http://elearn9.itsc.cuhk.edu.hk/> (visited between 2009 and 2011).
3. Minutes of the Proceedings of the Legislative Council (1884-1997), in Hong Kong Legislative Council's website: <http://www.legco.gov.hk/english/index.htm> (visited between 2010 and 2011).

Public records retrieved from Hong Kong online database

If public health laws constitute the backbone of this thesis, then the following can be described as the flesh and blood for the current study. The following reports not only furnish this study detailed historical background of Hong Kong's public health condition year by year from 1844 to 1941, but also provide a convenient perspective from which the colonial government's perception, interpretation and reaction to Hong Kong's public health problems can be observed.

1. Medical and sanitary reports

——The Colonial Surgeon's annual reports (1844-1896), from 1897 it was substituted by the Principal Civil Medical Officer's annual reports (1897-1924), the Director of Medical and Sanitary Services reports (1929-1938)). These public health contain detailed sanitary and medical conditions in different period of Hong Kong.

——The Sanitary Board's reports

2. Registrar General/Secretary of Chinese Affairs' reports

The Registrar General's annual reports (1845-1912), later changed to Secretary of Chinese Affairs' annual reports (1913-1966) provide this study many useful information of the then Chinese community, in terms of Chinese population, housing and working conditions.

3. Commission/Individual reports/memoranda on public health related

- “Report of the Committee on the Public Health and Cleanliness, 1843,” The appointment of this Committee was notified in *HHGG*, 17 August 1843, p.100. The Committee's report was however obtained from the newspaper *Hongkong Register*, 10 Sep.1844, pp.154-155, 17 Sep. 1844, p.159 and 15 Oct. 1844, p.176.
- Report of the commissioners appointed by His Excellency John Pope Hennessy to inquire into the working of the Contagious Diseases Ordinance 1867, 1878*. Hong Kong: Noronha & sons, printers, 1879. An electronic reproduction of this report was produced by the libraries of the University of Hong Kong:
<http://ebook.lib.hku.hk/CADAL/B38633887.pdf> (accessed 14 May 2008).
- “Mr. Chadwick's Report on the Sanitary Conditions of Hong Kong,” in *British Parliament Paper*, 1882 [C.3387] (Strictly speaking this report should not be in this sub-category, as no Hong Kong database contains E-copy of this report, but due to its important impact on HK's public health legislation, it appears here).
- Danby, W. (1894) “[Suggestions and Plans of the design of Chinese houses to Chairman of Committee re the Housing of the Chinese],” dated 10th July 1894, Appendix to Chadwick & Simpson (1902), “Report on the Question of the Housing of the Population of Hongkong [with the Public Health and Buildings Bill],” in *SP for the year 1902*: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902, pp.648-652 (Report page numbers, pp.22-26).
- “Report of the Medical Committee appointed by H. D. Sir William Robinson to inquire into Hong Kong's Medical Department, 1895,” in *SP for the year 1895*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1895 (accessed 10 Feb. 2008).
- “Report of the Commission appointed by H. D. Sir William Robinson to enquire into the Working and Organization of the Tung Wa [sic] Hospital, 1896,” in *SP for the year 1896*: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1896 (accessed 15 July 2008).
- “Papers respecting the Reconstitution of the Sanitary Board,” in *SP for the year 1896*, pp.131-136, and pp.597-604: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1896 (Accessed 12 July 2011).
- “Report of the Commission appointed by His Excellency Sir William Robinson, K.C.M.G. etc., to inquire into the existence of Insanitary Properties in the Colony, together with the evidence taken before the commission and other appendices,” in *SP for the year 1898*: <http://sunzi.lib.hku.hk/hkgro/view/s1898/1583.pdf> (accessed 4 July 2011).
- “Report of the Committee of inquiry into the adequacy of the staff of the Medical Department,” in *SP for the year 1902*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902 (accessed 15 July 2008).
- Simpson, W. J. (1902) “Preliminary Memoranda on Plague Prevention in Hong Kong,”

- in *SP for the year 1902*: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902 (accessed 19 July 2008).
- Chadwick, Osbert (1902a) “Preliminary Report on the Sanitary Condition of Hongkong,” in *SP for the year 1902*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902 (accessed 19 July 2008).
- Chadwick, Osbert (1902b) “Sewerage and drainage of Hongkong,” in *SP for the year of 1902*: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902 (accessed 19 July 2008)
- Chadwick, Osbert & Simpson, W. J. (1902) “Report on the Question of the Housing of the Population of Hongkong [with the Public Health and Buildings Bill],” in *SP for the year 1902*: http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1902 (accessed 19 July 2008)
- H. A. Blake (1903), “Memorandum by H. E. the Governor on the Result of the treatment of patients in their own houses and in local hospitals, during the epidemic of 1903,” in *SP for the year 1903*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1903 (accessed 21 July 2009).
- “Report of the Committee Appointed by His Excellency the Governor to Inquire into the Causes of Chinese Infantile Mortality in the Colony,” in *SP for the year 1904*: <http://sunzi.lib.hku.hk/hkgro/view/s1904/1835.pdf> (accessed 14 March, 2011)
- “Report of the Committee appointed to consider and make suggestions for dealing with the cubicle question, 1907,” in *SP for the year 1907*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1907 (accessed 10 August 2009).
- “Report of the Commission appointed by His Excellency the Governor to enquire into and report on the Administration of the Sanitary and Building Regulations enacted by the Public Health and Buildings Ordinance, 1903, and the Existence of Corruption among the Officials Charged with the administration of the aforesaid regulations, 1907,” in *SP for the year 1907*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1907 (accessed 13 Feb. 2009).
- “Report of the Housing Commission appointed by His Excellency Sir Reginald Edward Stubbs to enquire ‘as to what measures are possible to increase the quantity and decrease the cost of housing accommodation in the Colony’ and to report to the Governor their findings and recommendations, 1923,” in *SP for the year 1923*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1923 (accessed 13 March. 2009).
- “Report of the Committee appointed to consider the breeding of Pigs and Poultry in the New Territories,” in *SP for the year 1934*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1934 (accessed 22 Mar. 2009).
- “Report of the Commission appointed by His Excellency the Governor of Hong Kong to enquire into the Causes and Effects of the Present Trade Depression in Hong Kong and Make Recommendations for the Amelioration of the Existing Position and for the Improvement of the Trade of the Colony,” in *SP for the year 1935*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1935 (accessed 22 Mar. 2009).
This report provides economic background for some public health problems, say water supply, overcrowding, food supplies and so on.

- C. F. Strickland (1935) “Report on the Possibilities of a Cooperative system in Hong Kong,” in *SP for the year 1935*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1935 (accessed 31 May. 2009).
- “Report of the Committee on Lepers,” in *SP for the year 1935*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1935 (accessed 16 Mar. 2011)
- A. R. Wellington (1937), “Memorandum on the changes in the Public Health Organization of Hong Kong during the period 1929 to 1937,” in *SP for the year 1937*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1937(accessed 1 Sep. 2009)
- “Report of the Housing Commission appointed by His Excellency His Excellency Sir William Peel to enquire into the housing difficulties in Victoria and Kowloon with special reference to overcrowding and its effect on tuberculosis and suggest steps which should be taken to remedy existing conditions, 1935,” in *SP for the year 1938*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1938 (accessed 10 Feb 2010).
- “Report of the Technical Committee for the Reorganization and Improvement of Existing Official Hospital and Clinical Facilities appointed by the Governor, 1938-1939,” in
- “Report by the Labour Officer Mr. H. R. Butters on Labour and Labour Conditions in Hong Kong, 1939,” in *SP for the year 1939*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1939 (accessed 3 April 2011).
- Committee on Chinese Law and Custom in Hong Kong (1953) *Chinese Law and Custom in Hong Kong: Report of a Committee Appointed by the Governor in October, 1948*. Hong Kong: Government Printer (This published report does not have electronic copy and is referred to as the ‘Strickland Report’ in this thesis).

4. Petitions

- “Dr. Ho Kai's Protest against the Public Health Bill, submitted to the Government by the Sanitary Board, and the Board's rejoinder thereto,” in *SP for the year 1887*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1887 (accessed 2 May 2008).
- Hong Kong General Chamber of Commerce (1901) “petition to the Secretary of State [criticising sanitary conditions of Hong Kong],” enclosed in the “Correspondence regarding the Sanitary Condition of Hongkong,” in *SP for the year 1901*:
http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1901 (accessed 10 Nov. 2009), pp.22-39; Despatch No.254 from Governor Blake to Secretary of State Chamberlain, 13 July 1901, CO129/305, pp.659-668.
- “[Petition from Chinese landowners with regard to compensation scheme under the Public Health and Buildings Bill 1902],” dated 5 September 1902, Enclosure 4 to Despatch No.116 from Governor Blake to Secretary of State Chamberlain, 10 March 1903, CO129/316, pp.325-329.
- “[Petition from European landowners with regard to compensation scheme under the Public Health and Buildings Bill 1902],” dated 28 September 1902, Enclosure 4 to Despatch No.116 from Governor Blake to Secretary of State Chamberlain, 10 March 1903, CO129/316, pp.330-333.
- “Petition from Land Owners with regard to Compensation under Section 185 of the Public Health and Buildings Bill 1902,” dated 3 December 1902, enclosed in the “Public Health and Buildings Commission Report, 1907,” in *SP for the year 1907*:

http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1907 (accessed 13 Feb. 2009)

——“Correspondence relating to the Petition for Greater Representation of the Public on the Executive and Legislative Councils, 1916,” in SP for the year 1916:

http://sunzi.lib.hku.hk/hkgro/browseSP.jsp?the_year=1916 (accessed 2 June 2010).

Newspapers and journals

Hong Kong English-language newspapers and journals:

China Mail (*CM*), 1845 onwards

Friend of China & Hongkong Gazette, 1842-1861

Hong Kong Daily Press (*DP*), 1870-1941 with gaps

Hong Kong Register (*HKR*), 1844-1858

Hong Kong Telegraph (*HKT*), 1881-1941 with gaps

South China Morning Post (*SCMP*), 1903 onwards

The Hongkong Monthly Magazine, 1857-1858

Chinese-language newspapers*

Xunhuan ribao (循环日报) (Universal Circulating Herald) (*XH*), 1874-1883 with gaps

Huazi ribao (华字日报) (Chinese Mail), 1895 onwards

Shenbao (申报) (Shanghai Mail), 1872 onwards (Although this paper published in Shanghai, it regularly reported on Hong Kong, though in a small scale)

Gongshan ribao (工商日报) (Industry & Commerce Daily Press), 1925 onwards

Huaqiao ribao (华侨日报) (Oversea Chinese Daily), 1925 onwards

Xia'er guanzhen (遐迩贯珍) (1853-1856)

British newspapers and journals

The Times, 1785 onwards (The Times Digital Archives 1785-1985, occasionally reported and commented on Hong Kong development)

The British Medical Journal (*BMJ*), 1840 onwards

The Lancet, 1823 onwards

* Chinese newspapers provide a very different perspective on the development of the Chinese community. However, compared with English press, Chinese newspapers paid less attention to local business, but reported a lot on mainland China. Besides, Chinese newspapers were less well preserved, so the information for the nineteenth century in Chinese was fragmentary.

Statutes and cases

Though statutes are not strictly bibliographic material, in this study Hong Kong's early public health laws constitute an important part of the thesis. The following are the key statutes investigated by this study (For an overview of the changes and development of Hong Kong's public health laws please see the Tale of Hong Kong medical and sanitary laws 1844-1941, in Appendix I to this dissertation):

Colonial Ordinances in Hong Kong

The Good Order and Cleanliness Ordinance, No.14 of 1845

The Buildings and Nuisances Ordinance, No.8 of 1856

Venereal Diseases Ordinance, No.12 of 1857

Contagious Diseases Ordinance, No.10 of 1867

The Tung Wah Hospital Ordinance, No.3 of 1870

The Medical Registration Ordinance, No.6 of 1884

The Public Health Ordinance, No.24 of 1887

The European District Reservation Ordinance, No.16 of 1888

The Buildings Ordinance, No.15 of 1889

The Crown Lands Resumption Ordinance, No.23 of 1889

The Taipingshan Resumption Ordinance, No.8 of 1894

The Closed Houses and Insanitary Dwellings Ordinance, No.15 of 1894

The Public Health and Buildings Ordinance, No.1 of 1903

The Pharmacy Ordinance, No.12 of 1908

The Midwives Ordinance, No.22 of 1910

The Dentistry Ordinance, No.16 of 1914

The Tung Wah Hospital Ordinance, No.31 of 1930

The Nurses Registration Ordinance, No.1 of 1931

The Urban Council Ordinance, No.7 of 1935

The Public Health (Quarantine and Prevention of Disease) Ordinance, No.12 of 1935

The Public Health (Food) Ordinance, No.13 of 1935

The Public Health (Sanitation) Ordinance, No.15 of 1935

The Public Health (Animals and Birds) Ordinance, No.16 of 1935

The Buildings Ordinance, No.18 of 1935

The Nursing and Maternity Homes Registration Ordinance, No.48 of 1936

The Town Planning Ordinance, No.20 of 1939

Imperial Acts

As a study of legal transplantation, attention has also been given to some of the relevant laws enacted in the United Kingdoms:

The Public Health Acts, 1848, 1867 and 1875

The Medical Acts, 1858, 1860 (Amendment Act), 1883 (amendment) and 1886

The Contagious Diseases Acts, 1864, 1866 and 1869

The Housing of the Working Class Act, 1890

The Nurse Act, 1919

Cases

Hong Kong Law Reports (Hereafter HKLR) started from the year of 1905. Before 1905, case summaries and reports from various layers courts in Hong Kong were published in local English newspapers, say *China Mail*, *Daily Press*. Some cases cited from Norton-Kyshe's two extensive volumes of *The history of the laws and courts of Hong Kong from the earliest period to 1898*.

Wong Oon Tong v The Crown [1957] HKLR 178

Leung Chi-kin v. The Queen [1970] HKLR 25

Lau Hon-wah and The Queen [1980] HKLR 221

Secondary Sources

Books and articles

Abraham, Andrew (2002) "The Transfer of the Straits Settlements: A Revisionist Approach to the Study of Colonial Law and Administration," 42 *J. of the Royal Asiatic Society Hong Kong Branch*, 1-32.

Alford, William P. (1985-86) "The Inscrutable Occidental? Implications of Roberto Unger's Uses and Abuses of the Chinese Past," 64 *Texas Law Rev.*, 915-972.

Allom, Thomas & Wright, George Newenham (1842) *China, in a series of Views, Displaying the Scenery, Architecture, and Social Habits of that Ancient Empire*, London. Vol.1, 17- 33.

Allott, Antony (1980) *The Limits of Law*, London: Butterworth.

Anderson, J. N. D (1960) "Colonial Law in Tropical Africa: The Conflict Between English, Islamic and Customary Law", in 35 (4) *Indian Law Journal*.

Anderson, Michael R. (1993) "Islamic Law and the Colonial Encounter in British India", in David Arnold and Peter Robb eds., *Institutions and Ideologies: A SOAS South Asia Reader*, Richmond, Surrey: Curzon Press.

Anderson, Warwick (1992) "'Where Every Prospect Pleases and Only Man Is Vile':

- Laboratory Medicine as Colonial Discourse,” 18 *Critical Inquiry*, 506-529.
- Angela Ki Che Leung and Charlotte Furth ed. (2010) *Health and Hygiene in Chinese East Asia, Policies and publics in the long twentieth century*, Durham and London: Duke University Press.
- Arnold, David (1993) *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-century India*, Berkeley: University of California Press.
- Baker, R.A & Bayliss R.A. (1987) “William John Ritchie Simpson (1855-1931): Public Health and Tropical Medicine,” 31 *Medical History*, 450-465.
- Balfour, S.F. (1941) *Hong Kong before the British: Being A Local History of the Region of Hong Kong and the New Territories before the British Occupation*, [Hong Kong]: Reprinted from the Tien Hsia monthly 1941. An e-copy of this book is available at: <http://ebooks.lib.hku.hk/archive/files/c33551374b51d64110776affd529d086.pdf>
- Bard, Solomon (2002) *Voices from the Past: Hong Kong 1842-1918*, Hong Kong: Hong Kong University Press.
- Bashford, Alison (2004) *Imperial Hygiene: A Critical History of Colonialism, Nationalism and Public Health*, Basingstoke: Palgrave Macmillan.
- Baxi, Upendra (2003) “The colonialist heritage”, in Pierre Legrand and Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge: Cambridge University Press.
- Benda-Beckmann, Keebet von & Strijbosch, Fons ed. (1986) *Anthropology of law in the Netherlands: Essays on Legal Pluralism*, Dordrecht: Foris Publications.
- Benjamin K.P. Leung, Teresa Y.C. Wong (1994) *25 Years of Social and Economic Development in Hong Kong*, Hong Kong: Hong Kong University Press.
- Bennett, T.W. (2004) *Customary Law in South Africa*, Lansdowne: Juta and Co.
- Bernard, William D. (1844) *Narrative of the Voyages and Services of the Nemesis, from 1840 to 1843 and of the Combined Naval and Military Operations in China: Comprising a Complete Account of the Colony of Hong Kong, and Remarks on the Characters and Habits of the Chinese*, London: Colburn, 1844, vol.2.
- Benton, Lauren (2002) *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, Cambridge: Cambridge University Press.
- Bhattacharya, Neeladri (2001) “Remaking Custom: The Discourse and Practice of Colonial Codification”, in R. Champaklaksmi and S. Gopal eds., *Tradition, Dissent and Ideology: Essays in Honor of Romila Thapar*, New Delhi: Oxford University Press.
- Bhattacharyya-Panda, Nandini (2008) *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal*, New Delhi: Oxford University Press.
- Bicker, Robert A. (1999) *Britain in China: community, culture and colonialism, 1900-49*, Manchester: Manchester University Press.
- Birch, Alan & Yao, Y. C. and Sinn, Elizabeth ed. (1984) *Research Materials for Hong Kong studies*, Hong Kong: Centre of Asian Studies, University of Hong Kong.

- Bloomfield, Frena (1983) *The Urban Council 1883-1983*, Hong Kong: Urban Council.
- Blue Gregory, Bunton Martin, Croizier Ralph ed. (2002) *Colonialism and the Modern World, Selected Studies*, London: M. E. Sharpe.
- Bollen, Ruth (2011) "Why did Western countries attempt to impose their medicine on indigenous societies in the nineteenth century? What were the results?" in *The New Zealand Medical Student Journal*, No. 14, 29.
- Brereton, Bridget (1997) *Law, Justice and Empire: The Colonial Career of John Gorrie, 1829-1892*, Jamaica: University of the West Indies Press.
- Bristow, Roger (1984) *Land-use planning in Hong Kong: History, Policies and Procedures*, Hong Kong: Oxford University Press.
- Cai, Rongfang (2001) *Xianggang ren zhi Xianggang shi, 1841-1945 (The Hong Kong People's History of Hong Kong, 1841-1945)*, Hong Kong: Oxford University Press.
- Cargill, Marie E. (1998) *Well Women: Healing the Female Body through Traditional Chinese Medicine*, Westport, Conn.: Bergin & Garvey.
- Carroll John M. (2007) *Edge of Empires, Chinese Elites and British Colonials in Hong Kong*, Hong Kong: Hong Kong University Press.
- Chan, Ming K. ed. (1994) *Precarious Balance: Hong Kong between China and Britain 1842-1992*, M E Sharpe: Armonk, NY and London, England.
- (1997) "The Imperfect Legacy: Defects in the British Legal System in Colonial Hong Kong," 18 *University of Pennsylvania J. of International Business Law*, 133-156.
- Chan, Wai Kwan (1991) *The Making of Hong Kong Society: Three Studies of Class Formation in Early Hong Kong*, Oxford: Clarendon Press.
- Chanock, Martin (1985) *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge: Cambridge University Press.
- Chen, Albert H.Y. (2009), *The Rule of Law Under 'One Country, Two Systems': The Case of Hong Kong 1997-2009*, paper presented at the conference on 'Benchmarking Development of the Rule of Law in Asia: 1999-2009', held by the Maureen and Mike Mansfield Foundation & National Taiwan University College of Law, 9-13 September 2009.
- Chen, Hua (1991) *Zhongyi de kexue yuanli (Chinese medicine's Scientific Principles)*. Shangwu chubanshe (Commercial Press).
- Chen, Li (2009) "Law, Empire, and Historiography of Modern Sino-Western Relations: A Case Study of the Lady Hughes Controversy in 1784," 27 *Law & History Review*, 1-53.
- Chen, Tong (2002) "Zhongguo faltu xiguan zai xianggang changqi cunzai de lishi kaocha", ("An Historical Review of the Long Existence of Chinese Customary Laws in Hong Kong") 4 *Shilin*, 21-31.
- Cheung, Ngai Fen (1997) "Chinese zuo yuezi (sitting in for the first month of the postnatal period) in Scotland", 13 *Midwifery*, 55-65.
- Choa, G. H. (1993) "The Lowson Diary: A Record of the Early Phase of the Hong Kong Bubonic Plague 1894", 33 *J. of the Royal Asiatic Society Hong Kong Branch*, 129-146.

- (2000) *The Life and Times of Sir Kai Ho Kai: a Prominent figure in Nineteenth-century Hong Kong*, Hong Kong: Chinese University Press.
- Chu, Cindy Yik-yi (2005) *Foreign Communities in Hong Kong, 1840s – 1950s*, Basingstoke: Palgrave Macmillan.
- Clifford, James (1988) *The Predicament of Culture*, Cambridge Mass: Harvard University Press.
- Collier, Jane & Starr, June ed. (1989) *History and Power in the Study of Law*, Ithaca, N.Y.: Cornell University Press.
- Comaroff, John L. (2001) “Colonialism, Culture and the Law: A Foreword”, in 26 *Law & Social Inquiry*, Issue 2, 305-314.
- Cotterrell, Roger (2001) “Is there a Logic of Legal Transplants?” In D. Nelken & J. Feest eds., *Adapting to Legal Cultures*, Oxford: Hart Publishing.
- Cunningham, Andrew & Andrews, Bridie eds. (1997) *Western medicine as Contested Knowledge*, Manchester & New York: Manchester University Press.
- Darian-Smith, Eve & Fitzpatrick, Pether ed. (1999) *Laws of the Postcolonial*, Ann Arbor: University of Michigan Press.
- Deng, Zhongxia (1999) “Shenggang Dabagong”, in Meibao Cheng and Yule Zhao ed., (1999) *Xianggang Shi Yanjiu Lunzhu Xuanji*, Hong Kong: Hong Kong Open University.
- Dikötter, Frank (2004) “A paradise for rascals: Colonialism, punishment and the prison in Hong Kong (1841-1898),” 8 *Crime, History & Societies*, 49-63.
- Duncan, Garrett Albert (2007) “Discourse of Chinese medicine and westernization,” in S. Xu ed. *Discourse as Cultural Struggle*, Hong Kong: Hong Kong University Press.
- Dutton, Geoffrey (1967) *The hero as murderer: the life of Edward John Eyre, Australian explorer and Governor of Jamaica 1815-1901*, Sydney: Collins.
- Edmondson, Joseph (1896) *Understood but not Expressed: A Review of Certain Regulations Existing in the Alleged “Interest of Public Health”, on the Continent of Europe and in Some British Colonies*, London: The British Committee of the Federation for the Abolition of State Regulation of Vice.
- Eitel, E. J. (1895, 1983) *Europe in China: the History of Hong Kong from the Beginning to the Year 1882*, London: Luzac & Co. (1895); Hong Kong: Oxford University Press (1983).
- Endacott, G. B. (1962) *Fragrant Harbor: A Short History of Hong Kong*, Hong Kong: Oxford University Press.
- (1964) *Government and People in Hong Kong*, Hong Kong: Hong Kong University Press.
- (1973) *A History of Hong Kong*, Hong Kong: Oxford University Press.
- Engels, Dagmar and Marks, Shula (1994) “Introduction: Hegemony in a colonial context”, in Dagmar Engels and Shula Marks eds., *Contesting Colonial Hegemony: State and Society in Africa and India*, British Academic Press.
- Evans, D. (1971) “Common Law in a Chinese Setting - The Kernel or the Nut?”, 1 *Hong*

Kong Law J. 9-32.

Evans, D. and Emrys, M.(1973) “The New Law of Succession in Hong Kong” 3 *Hong Kong Law J.* 7.

Fanon, F.(1989) *Studies in a Dying Colonialism*, London, England: Earthscan Publications.

Faure, David (1981) ‘Paying for Convenience: An Aspect of Corruption That Arises from Revenue-Spending,’ in Rance P. L. Lee et al ed. *Corruption and Its Control in Hong Kong: Situations Up to the Late Seventies*, Hong Kong: Chinese University of Hong Kong.

——ed., (1995) *History of Hong Kong, 1842-1984*, Hong Kong and London: Tamarind Books.

——(1997) *Society, A Documentary History of Hong Kong*, Hong Kong: Hong Kong University Press.

——ed., (2003) *Hong Kong: A Reader in Social History*, Hong Kong: Oxford University Press (China).

Finer, S. E. (1952) *The Life and Times of Sir Edwin Chadwick*, London: Methuen.

Fisher, Carney T. (1997) “Plague in Hong Kong 1894”, paper presented at The International Conference on Hong Kong and Modern China, Hong Kong University, The Center of Asia Studies, 3-5 December 1997.

Fitzpatrick, Peter (1992) *The Mythology of Modern Law*, London: Routledge.

——ed., (1991) *Dangerous Supplements: Resistance and Renewal in Jurisprudence*. London: Pluto.

Flinn, M. W. (1968) *Public Health Reform in Britain*, London: Macmillan.

Foster, Hamar, Berger, L. Ben. and Buck, A. R. (2008) “Introduction: does law matter? The New colonial legal history”, in Hamar Foster, Andrew Buck, Ben Berger eds., *The Grand experiment: law and legal culture in British settler societies*, Vancouver: Published by the Osgoode Society for Canadian Legal History by University of British Columbia Press.

Foucault, M. (1978,1991) *Governmentality*, first published in 1978, later collected in G. Burchell, C. Gordon, and P. Miller eds., *The Foucault Effect: Studies in Governmentality*, Chicago: University of Chicago Press.

—— (1980) *Power/Knowledge, Selected Interviews and Other Writings, 1972-1977*, New York: Pantheon Books.

Freedman, Maurice (1966) “Shifts of Power in the Hong Kong New Territories,” 1 *J. of Asian and African Studies*, 3-12.

——(1979) “Colonial Law and Chinese Society,” in G. W. Skinner ed., *The Study of Chinese Society: Essays by Maurice Freedman*. Stanford, Calif.: Stanford University Press.

Geertz, Clifford (1963) *Old Societies and New States: the Quest for Modernity in Asia and Africa*, New York: Free Press of Glencoe; Collier-Macmillan.

——(2000) *Local Knowledge: Further Essays in Interpretive Anthropology*, New York:

Basic Books.

- George, Janet (1993a) "The Lady Doctor's 'Warm Welcome': Dr. Alice Sibree and the Early Years of Hong Kong's Maternity Service 1903-1909," 33 *J. of the Royal Asiatic Society Hong Kong Branch*, 81-109.
- Ghai, Yash et al., ed. (1987) *The Political Economy of Law: A Third World Reader*, Delhi: Oxford University Press.
- Gittins, Jean (1969) *Eastern Windows, Western Skies*, Hong Kong: South China Morning Post.
- Goldman, Lawrence (1991) "Statistics and the Science of Society in Early Victorian Britain; An Intellectual Context for the General Register Office," 4 *Social History of Medicine*, 415-434.
- Goodstadt, Leo F. (2005) *Uneasy Partners: The Conflict between Public Interest and Private Profit in HongKong*, Hong Kong: Hong Kong University Press.
- Goodwin, K (2008) "Travelogue writers in the Age of Inquiry: Law, Orientalism, and Enlightenment Ideology in Southeast Asia" in 2 (1) *The Forum: Journal of History*.
- Gramsci, Antonio (1971) *Selections from the Prison Notebooks of Antonio Gramsci*, Hoare, Quintin and Smith, Geoffrey Nowell eds., International Publishers Co, Reprint edition.
- Greenleaf et al., D. (2012) "Digitising and Searching Australasian Colonial Legal History", UNSW Law Research Paper No. 2012-23.
- Guha, Ranajit (1997) *Dominance without Hegemony: History and Power in Colonial India*, Harvard University Press.
- Halperin, Jean-Louis (2010) "Legal Transplants: Western Legal Transplants and India", in 2 (1) *Jindal Global Law Review*, 12-39.
- Halperin, D. M. (1995) *Saint Foucault: Towards a gay hagiography*, New York: Oxford University Press.
- Hallsworth, Joseph (1915) *Memorandum on the Labour and Public Health Law affecting Commercial Employees*, Manchester: Amalgamated Union of Co-operative Employees.
- Hamilton, Geoffrey Cadzow (1969) *Government Departments in Hong Kong*, Hong Kong: Government Press.
- Hamilton, Margaret (1978) "Opposition to the Contagious Diseases Acts, 1864-1886," 10 *A Quarterly Journal Concerned with British Studies*, 14-27.
- Hamilton, Sheilah E. (2008) *Watching Over Hong Kong: Private Policing 1841-1941*, Hong Kong: Hong Kong University Press.
- Hammond, J.L. and Hammond, Barbara. Stansfeld, James. (1932) *A Victorian Champion of Sex Equality*, London: Longmans, Green and Co..
- Harding, Andrew (2001) "Comparative Law and Legal Transplantation in South East Asia", in D. Nelken & J. Feest eds., *Adapting to Legal Cultures*, Oxford: Hart Publishing.
- (2002) "Global Doctrine and local knowledge: Law in South East Asia," 51 *International and Comparative Law Quarterly* 35-53.
- Harrison, Mark (1994) *Public health in British India: Anglo-Indian preventive medicine*

1859-1914, Cambridge University Press.

- Haydon, Edwin S. (1962) "The Choice of Chinese Customary Law in Hong Kong," 11 *International and Comparative Law Quarterly* 231-250.
- (1995) "Chinese Customary Law in Hong Kong's New Territories: Some Legal Remarks," 35 *J. of the Royal Asiatic Society Hong Kong Branch* 1-40.
- Hayes, James (1977) *The Hong Kong Region, 1850-1911: Institutions and Leadership in Town and Countryside*, Hamden: Archon Books; Folkestone: Dawson.
- (1983a) *The Rural Communities of Hong Kong: Studies and Themes*, Hong Kong; Oxford: Oxford University Press.
- (1983b) "Secular Non-Gentry Leadership of Temple and Shrine Organizations in Urban British Hong Kong", 23 *Journal of the Hong Kong Branch of the Royal Asiatic Society*.
- (1984) "Hong Kong Island Before 1841", in *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol.24, 105-140.
- (1993) *Tsuen Wan: Growth of a "New Tow" and Its People*. Hong Kong; New York: Oxford University Press.
- Haynes, Douglas M. (2001), *Imperial Medicine: Patrick Manson and the Conquest Tropical Disease*, University of Pennsylvania Press.
- Harrison, Mark & Pati, Biswamoy (2001) *Health, Medicine and Empire: Perspectives on Colonial India*, London, Sangam Books.
- Heath, Deana (2010) *Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australia*, New York: Cambridge University Press.
- Higgs, Edward (1991) "Disease, Febrile Poisons, and Statistics: The Census as a Medical Survey, 1841-1911," 4 *The Social History of Medicine*, 465-478.
- Hill, Michael R. (1993) *Archival strategies and techniques*, Newbury Park; London Sage Publications.
- Ho, Aiguo (2005) "Quanpan xihua vs. zhongguo benwei—shilun 1930 niandai zhongguo guanyu wenhua jianshe luxiang de lunzhan" ("Wholesale westernisation vs. Chinese centered—An enquiry on Chinese debate in the 1930s about the roadmap of culture construction"), 34 *Ershiyi shiji (The 21st Century)*.
- Ho, Faith C. S. (2006) "History of Infectious Diseases in Hong Kong: A Story of Discovery and Challenge," in A. Starling et al. ed., *Hong Kong Museum of Medical Science Society, Plague, SARS and the Story of Medicine in Hong Kong*, Hong Kong: Hong Kong University Press.
- Hodges, Sarah (2005) "'Looting' the Lock Hospital in Colonial Madras during the Famine Years of the 1870s," 18 *Social History of Medicine*, 379-398.
- Hong Kong Museum of Medical Science Society (2006) *Plague, SARS and the Story of Medicine in Hong Kong*, Hong Kong: Hong Kong University Press.
- Hong Kong Ophthalmic Society (1958) "Medical Registration (Amendment) Ordinance, 1958," 10 *The Bulletin of the Hong Kong Chinese Medical Association*, 193-201.
- Hooker, M. B. (1969) "The Relationship between Chinese Law and Common Law in

- Malaysia, Singapore, and Hong Kong,” 28 *The Journal of Asian Studies*, 723-742.
- (1975) *Legal pluralism: an introduction to colonial and neo-colonial laws*, Oxford: Clarendon Press.
- Howell, Philip (2004) “Race, Space and the Regulation of Prostitution in Colonial Hong Kong,” 31 *Urban History*, 229-248.
- Hsiang Ling, Lo et al., (1963) *Hong Kong and its external communication before 1842: pre-history of Hong Kong*, Xianggang, Zhongguo xue she, Minguo 52.
- Hu, Chia-Chien & Wong Aline K. (1968) “A Preliminary Report on the Kaifong Study,” 7 *United College Journal*, 27-48.
- Huntington, S. (1996) *The Clash of Civilizations and the Remaking of World Order* New York: Simon & Schuster.
- Jarman, R.L. ed. (1996) *Hong Kong Annual Administration Reports, 1841-1941*, vol. 1, Farnham Common, Archive Editions.
- Jazeel, Tariq (2009) “Governmentality”, in 27 (3 100) *Social Text*, 136-140.
- Jinke, Ma ed. (1998) *Zaoqi Xianggangshi Yanjiu Ziliao Xuanji* (Selected materials of Studies of Early History of Hong Kong), Joint Publishing (H.K.) Co., LTD. Vol.1-2.
- Jones, Dorsey D. (1931) *Edwin Chadwick and the Early Public Health Movement in England*, Iowa City, IA: University.
- Jones, Margaret (2003) “Tuberculosis, Housing and the Colonial State: Hong Kong, 1900-1950”, in 37(3) *Modern Asian Studies*, 653-682.
- Kelly, J.M. (1992) *A short history of Western legal theory*, Oxford: Clarendon Press; New York: Oxford University Press.
- Kelso, William W. (1894) *Observations on Water Supply*, Glasgow: William Hodge & Co.
- King, Ambrose Y.C. & Lee, Rance P.L. ed., (1981) *Social life and development in Hong Kong*, Hong Kong: Chinese University Press.
- King, Anthony (1989) *Urbanism, Colonialism, and the World-economy: Cultural and spatial foundations of the world urban system*, London: Routledge.
- Kirkwood, Robert (1882) *Our Sanitary Laws: How They Are Administered: A Contribution to the Discussion of the Question of Public Health*, Glasgow: Maclehose.
- KKY, Lai & JLY, Chan et al. (2003) “Sir Patrick Manson: Good Medicine for the People of Hong Kong,” 9 *Hong Kong Medical J.* 145-147.
- Kumar, Deepak ed. (2001) *Disease and Medicine in India-A Historical Overview*, Tulika Books, New Delhi.
- Kwok-kin, Siu (1975) *Qing chu Qianhai Qianhou Xianggang zhi Shehui Bianqian* (Social Change of Hong Kong before and after the maritime prohibition in the early time of Qing dynasty), Hong Kong: Shangwu Yinshuguan.
- (1984) *Hong Kong's economic situation during the early period of coastal reclamation*, Tai Pei, S.N.
- (2001) *Heritage trails in urban Hong Kong*, Hong Kong, Wan Li Book Co.

- Lambert, David & Howell, Philip (2003) "John Pope Hennessy and the Translation of 'Slavery' between Late Nineteenth Century Barbados and Hong Kong," 55 *History Workshop J.* 1-24.
- Larrain, Jorge (1989) *Theories of Development: Capitalism, Colonialism and Dependency*, Cambridge: Polity.
- Lau, Chi Kuen (1997) *Hong Kong's Colonial Legacy*, Sha Tin, N.T., Hong Kong: Chinese University Press.
- Lazarus-Black, Mindie. Hirsch, Susan F. eds., (1994) *Contested States: Law, Hegemony and Resistance*, New York and London: Routledge, 1st edition.
- Lee, Eliza W.Y. ed. (2003) *Gender and Change in Hong Kong: Globalization, Post-colonialism, and Chinese Patriarchy*, Vancouver, B.C.: University of British Columbia Press; London: Eurospan.
- Lee, Hoyin and Distefano, Lynne D. (2002) *A Tale of Two Villages: the Story of Changing Village Life in the New Territories*, Oxford; New York: Oxford University Press.
- Lee, Pui-tak (2004) *Colonial Hong Kong and Modern China: Interaction and Reintegration*, Hong Kong: Hong Kong University Press.
- Lee, Rance P. L. (1978) "Interaction between Chinese and Western Medicine in Hong Kong: Modernization and Professional Inequality," in A. Kleinman et al., ed., *Culture and Healing in Asian Societies, Anthropological, Psychiatric and Public Health Studies*, Cambridge, Massachusetts: Schenkman Publishing Company.
- (1980) "Perceptions and Uses of Chinese medicine among the Chinese in Hong Kong", 4 *Culture, Medicine and Psychiatry*, 345-375.
- (1981) *Corruption and Its Control in Hong Kong: Situations up to the Late Seventies*, Hong Kong: Chinese University Press.
- Lei, Xianglin (2002) "How Did Chinese Medicine Become Experiential? The Political Epistemology of Jingyan," 10:2 *Positions: East Asia Cultures Critique*, 333-364.
- Lethbridge, Henry J. (1970) "Hong Kong Cadets, 1862-1941," 10 *J. of the Royal Asiatic Society Hong Kong Branch*, 36-56.
- (1971) "The District Watch Committee: The Chinese Executive Council of Hong Kong," 11 *J. of the Royal Asiatic Society Hong Kong Branch* 116-141.
- (1973) "A Chinese Association in Hong Kong: The Tung Wah", in *Asian Studies* (10), 144-158.
- (1978) *Hong Kong: Stability and Change, a Collection of Essays*, Hong Kong: Oxford University Press.
- (1985) "Scandal and Corruption, 1842-1941," H. J. Lethbridge, *Hard Graft in Hong Kong: Scandal, Corruption, and the ICAC*. Hong Kong: Oxford University Press.
- Levine, Philippa (1994) "Venereal Disease, Prostitution, and the Politics of Empire: The Case of British India," 4 *Journal of the History of Sexuality*, 579-602.
- (1996) "Rereading the 1890s: Venereal Disease as 'Constitutional Crisis' in Britain and British India," 55 *J. of Asian Studies*, 585-612.

- (1998) “Modernity, Medicine, and Colonialism: The Contagious Diseases Ordinances in Hong Kong and the Straits Settlements,” 6 *Positions: East Asia Cultures Critique*, 675-705.
- Lewes, Fred (1991) “The GRO and the Provinces in the Nineteenth Century,” 4 *Social History of Medicine*, 479-496.
- Lewis, D. J. (1983) “A Requiem for Chinese Customary Law in Hong Kong,” 32 *The International and Comparative Law Quarterly*, 347-79.
- Lewis M, MacLeod R, ed. (1988) *Disease, Medicine and Empire – Perspectives on Western medicine and the Experience of European Expansion*, London and New York: Routledge.
- Litowitz, Douglas (2000) “Gramsci, Hegemony, and the Law”, in 2 *Brigham Young University Law Review*, 515-551.
- Lowe, Kate & McLaughlin, Eugene (1992) “Sir John Pope Hennessy and the ‘Native Race Craze’: Colonial Government in Hong Kong, 1877- 1882,” 20 *J. of Imperial and Commonwealth History*, 223-247.
- Ludden, David ed., (2002) *Reading Subaltern Studies: Critical History, Contested Meaning and the Globalization of South Asia*, London: Anthem Press.
- Lupton, Deborah (1995) *The Imperative of Health: Public Health and the Regulated Body*, London; Thousand Oaks, Calif: Sage Publications.
- Ma, Yuan ed. (1953) *Xianggang falü huibian (Compilation of Hong Kong Ordinances)* Xianggang: huaqiao ribao chubanshe (Hong Kong: Huaqiao Daily Press).
- MacCormack, Geoffrey (1978) “Anthropology and Legal Theory”, 90 *The Juridical Review*, 216-32.
- (1996) *The Spirit of Traditional Chinese Law* Athens, London: University of Georgia Press.
- (2001) “Mythology and the Origin of Law in Early Chinese Thought” 1 *J. of Asian Legal History* 1-23.
- MacPherson, Kerrie L. (2008) *Invisible Borders: Hong Kong, China and the Imperatives of Public Health*, in *Public health in Asia and the Pacific: historical and comparative perspectives*, Milton J. Lewis, Kerrie L. MacPherson, eds. London, Routledge Press.
- Maine, H.S. (1986) *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas*, Tucson: University of Arizona Press. Originally published: New York: Holt, 1864.
- Manson-Bahr, Philip and Alcock, Colonel A. (1898) *The Life and Work of Sir Patrick Manson*, London, NY, etc. Cassell & Co. Ltd.
- Max, Wong (forthcoming) “The Invention of Tradition or the Politics of Intervention ---The Origins of Hong Kong Marriage Reform Ordinance 1971”, in *J. of Comparative Law*.
- Mcaleavy, H. (1963) “Chinese Law in Hong Kong: The Choice of Sources,” in N. Anderson ed., *Changing Law in Developing Countries*, London: Allen & Unwin.
- Merry, Sally Engle (1988) “Legal Pluralism,” 22 *Law & Society Rev.* 870-896.
- (1991) “Law and Colonialism,” 25 *Law & Society Rev.* 889-922.

- (1994) *Courts as Performance: Domestic Violence Hearings in a Hawai'i Family Court*, in Mindie Lazarus-Black, Susan F. Hirsch eds., *Contested States: Law, Hegemony and Resistance*, New York: Routledge.
- Milne, William Charles (1861) *Life in China*, London, Routledge, Warnes & Routledge.
- Miners, N.J. (1984) "State Regulation of Prostitution in Hong Kong, 1857 to 1941," 24 *J. of the Hong Kong Branch of the Royal Asiatic Society*, 143-161.
- (1987) "The Abolition of the Mui Tsai System, 1917 to 1924" in *Hong Kong under Imperial Rule, 1912-1941*, Hong Kong; Oxford: Oxford University Press.
- (1998) *The Government and Politics of Hong Kong*, Hong Kong; New York: Oxford University Press.
- Moore, Sally Falk ed. (2005) *Law and Anthropology: A Reader*. Malden, Mass.; Oxford: Blackwell.
- (1986) *Social Facts and Fabrications: Customary Law on Kilimanjaro, 1880-1980*, Cambridge: Cambridge University Press.
- Munday, Roderick (2003) "Accounting for an encounter", in Pierre Legrand, Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge: Cambridge University Press.
- Munn, Christopher (2001) *Anglo-China, Chinese people and British Rule in Hong Kong 1841-1880*, Richmond, Surrey: Curzon.
- Mushtaq, Muhammad Umair (2009) "Public Health in British India: A Brief Account of the History of Medical Services and Disease Prevention in Colonial India," 34 *J. of Community Medicine*, 6-14.
- Nacken, J. (1968) "Chinese Street-cries in Hong Kong," 8 *J. of the Royal Asiatic Society Hong Kong Branch*, 128-134.
- Nayar Pramond K. (2012) *Colonial Voices, The Discourse of Empire*, Wiley-Blackwell.
- Nelken, David (2003) "Comparatists and transferability", in Pierre Legrand, Roderick Munday eds., *Comparative Legal Studies: Traditions and Transitions*, Cambridge University Press.
- Nelken, David & Feest, Johannes ed. (2001) *Adapting Legal Cultures*, Oxford; Portland: Hart Publisher.
- Ngo, Tak Wing ed. (1999) *Hong Kong's History: State and Society under Colonial Rule*, London: Routledge.
- Nicolson, M. (1988) "Medicine and Racial Politics: Changing Images of the New Zealand Maori in the Nineteenth Century", in Arnold D, ed., *Imperial Medicine and Indigenous Societies*, New York: Manchester University Press.
- Norton-Kyshe, James William (1971) *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898*, Hong Kong: Vetch and Lee, reissue of the 1898 edition.
- Nunn, K.B. (1997) "Law as an Eurocentric Enterprise", in 15 *Law & Inequality*, 323.
- Orange, James (1924) *The Chater Collection: Pictures Relating to China, Hong Kong, Macao, 1655-1860*, London: Thornton Butterworth Ltd.

- Örtücü, Esin (1995) “ *A Theoretical Framework for Transfrontier Mobility of Law*”, in R. Jagtenberg, Esin Örtücü and A. de Roo eds., *Transfrontier Mobility of Law*, The Hague: Kluwer.
- Palmer, Michael (1987) “The Surface-Subsoil Form of Divided Ownership in Late Imperial China: Some Examples from the New Territories of Hong Kong,” 21 *Modern Asian Studies* 1-119.
- (1991) “Lineage and Urban Development in a New Territories Market Town,” 8 *JASO Occasional Papers*, 70-106.
- (2006) on Galloping Horses and Picking Flowers: China, Chinese Law and the ‘Asian Legal Tradition’, 1 *Journal of Comparative Law*, 165-170.
- Pedersen, S. (2001) “The Maternalist Moment in British Colonial Policy: The Controversy over ‘Chinese slavery’ in Hong Kong, 1917-1941”, 171 *Past and Present*, 162-163.
- Peers, Douglas M. and Gooptu, Nandini (2012) “Introduction”, in Douglas M. Peers and Nandini Gooptu eds., *India and the British Empire (the Oxford History of the British Empire Companion Series)*, Oxford University Press.
- Pillsbury, Barbara L. (1978) “‘Doing the Month’: Confinement and Convalescence of Chinese Women after Childbirth,” 12 *Social Science and Medicine*, 11-22.
- Porter, Dorothy (1999) *Health, Civilization, and the State: A History of Public Health from Ancient to Modern Times*, London; New York: Routledge.
- Pospisil, Leopold (1971) *Anthropology of Law: A Comparative Theory*, New York; London: Harper and Row.
- Prakash, G. (1990) *Bonded histories Genealogies of Labor Servitude in Colonial India*, Cambridge: Cambridge University Press.
- Pryor, E.G. (1975) “The Great Plague of Hong Kong”, in 15 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 61-70.
- Puiyin, Ho (2004) *The Administrative History of the Hong Kong Government Agencies, 1841-2002*, Hong Kong: Hong Kong University Press; London: Eurospan.
- (2004) *Challenges for an Evolving City: 160 years of Port and Land Development in Hong Kong*, Hong Kong: The Commercial Press.
- Rahimieh, Nasrin (1990) *Oriental Responses to the West: Comparative Essays in Select Writers from the Muslim World*, Leiden: E. J. Brill.
- Ramanna, Mridula (2000) “Control and Resistance: The Working of the Contagious Diseases Acts in Bombay City,” 35 *Economic and Political Weekly* 1470-1476.
- (2002) *Western medicine and Public Health in Colonial Bombay: 1845-1895*, New Perspectives in South Asian History, Delhi: Orient Longman.
- Robert, Simon & Palmer, Michael (2005) *Dispute processes: ADR and the primary forms of decision-making*, Cambridge, UK; New York: Cambridge University Press.
- Romano, Terrie M. (1997) “The Cattle Plague of 1865 and the Reception of ‘The Germ Theory’ in Mid-Victorian Britain”, 52 *J. of the History of Medicine*, 51-80.
- Rouland, Norbert (1994) *Legal Anthropology*, Stanford, Calif.: Stanford University Press.

- Runhe, Liu (2002) *A History of the Municipal Councils of Hong Kong: 1883-1999: from the Sanitary Board to the Urban Council and the Regional Council*, Hong Kong: Leisure and Cultural Service Dept.
- Runhe, Liu & Huilin, Wang et al. (2006) *Yishan xingdao: donghua sanyuan 135 zhounian jinian zhuanji wenji* (*Fostering Goodness Doing Rightness: Essay Collection celebrating 135 Anniversary of Tung Wah Three Hospitals*). Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- Ruskola, Teemu (2002) "Legal Orientalism", 101 *Michigan Law Rev.*, 179-234.
- (2013) *Legal Orientalism: China, The United States and Modern Law*, Cambridge, Mass: Harvard University Press.
- Said, Edward W. (1978) *Orientalism*, London: Penguin.
- (2004) *Power, Politics, and Culture: Interviews with Edward W. Said*, Bloomsbury Publishing PLC.
- Sayer, Geoffrey Robley (1937) *Hong Kong: Birth, Adolescence, and Coming of Age*. London, New York, Toronto: Oxford University Press.
- (1975) *Hong Kong 1862-1919: Years of Discretion*. Hong Kong: Hong Kong University Press.
- Schorr, David B. (2009) "Questioning Harmonization: Legal Transplantation in the Colonial Context", in 10 (2) *Theoretical Inquiries in Law Forum*, Article 3.
- Scott, David (1995, 1999) "Colonial Governmentality", first published in 43 *Social Text* (1995), later collected in David Scott, *Refashioning Futures: Criticism After Post-coloniality*, New Jersey: Princeton UP(1999).
- Selby, Stephen (1991) "Everything You Want to Know about Chinese Customary Law (But Were Afraid to Ask)," 21 *Hong Kong Law J.*, 45-77.
- Shah, Prakash (2005) *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law*, London: Glass House.
- Shani, Giorgio (2006) "Empire, Liberalism and the Rule of Colonial Difference: Colonial Governmentality in South Asia", in *Ritsumeikan Annual Review of International Studies*, Vol. 5, 19-36.
- Shepherd, Bruce (1982) *The Hong Kong Guide 1893, with an Introduction by H. J. Lethbridge*. Hong Kong: Oxford University Press.
- Shou-zhong, Yang & Da-we, Liu translated (1992) *Fu Qing-zhu's Gynecology* Boulder, Colo: Blue Poppy Press.
- Sin, Wai Man and Chu, Yiu Wai (1999) "In the Name of Law: Legality and Morality in Postcolonial Hong Kong", in 27 *International Journal of the Sociology of Law*, 185-205.
- Sinn, Elizabeth (1984) "Materials for Historical Research: Source Materials on the Tung Wah Hospital 1869-1941—the Case of a Historical Institution", in Alan Birch et al., ed., *Research Materials for Hong Kong Studies*, Hong Kong: Centre of Asian Studies, Hong Kong: Hong Kong University Press.
- (1994) "Chinese Patriarchy and the Protection of Women in Nineteenth-Century Hong Kong," in M. Jaschok & S. Miers, ed., *Women and Chinese Patriarchy: Submission*,

- Servitude, and Escape*, Hong Kong: Hong Kong University Press.
- (2003) *Power and Charity: A Chinese Merchant Elite in Colonial Hong Kong*. Hong Kong: Hong Kong University Press.
- (2007) “Women at Work: Chinese Brothel Keepers in Nineteenth-Century Hong Kong,” (3)19 *J. of Women’s History*, 87-111.
- Sinn, Elizabeth, Wong, Siulun & Chan, Wing-hoi edited (2009) *Rethinking Hong Kong: New Paradigms, New Perspectives*. [Hong Kong]: Centre of Asian Studies, University of Hong Kong.
- Siu Keung, Cheung (2007) *Gender and Community Under British Colonialism: Emotion, Struggle, and Politics in a Chinese Village*, New York & London: Routledge.
- Skinner, G. William (1957) *Chinese Society in Thailand: an Analytical History*, Ithaca, NY : Cornell University Press.
- (1961) *Leadership and power in the Chinese community of Thailand*, Ithaca: Cornell U.P.
- Smandych, Russell (2010) “Mapping Imperial Legal Connections: toward a comparative historical sociology of colonial law”, in 31 *Adelaide Law Review*.
- Smandych, Russell and Lee, Gloria (1995) “Women, Colonization and Resistance: Elements of an Amerindian Auto-historical Approach to the Study of Law and Colonialism”, in 10 (1) *Native Studies Review*.
- Smith, Carl T. (1976) “Notes on Tung Wah Hospital, Hong Kong”, in 16 *J. of the Royal Asiatic Society Hong Kong Branch*, 263-280.
- Smith, F. (1990) “The Contagious Diseases Acts Reconsidered”, in (3) *Social History of Medicine*, 203-209.
- Snaith, Ian (1984) *The Law of Co-operatives*. London: Waterlow.
- Snyder, Francis G. (1981) “Colonialism and Legal Form: the Creation of ‘Customary Law’ in Senegal”, in 19 *Journal of Legal Pluralism*.
- Song, Ci (1924) *The “Hsi Yeuan Lu” or “Instructions to Coroners”*, London: Bale, Sons & Danielsson, translated by Herbert A. Giles.
<http://ebook.lib.hku.hk/CADAL/B31629039/>
- Stansfeld, James (1882) Lord Kimberley’s Defence of the Government Brothel System in Hong Kong. London: National Association for the Repeal of the Contagious Diseases Acts.
- Starr, June & Collier, Jane F. ed. (1989) *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca, N.Y.: Cornell University Press.
- Starr, June & Goodale, Mark ed. (2004) *Practicing Ethnography in Law: New Dialogues, Enduring Methods*. New York: Palgrave Macmillan; Basingstoke: Palgrave.
- Stewart, Jean Cantlie (1983), *The Quality of Mercy: The Lives of Sir James and Lady Cantlie*, London: George Allen & Unwin.
- Su, Yigong (1999) “Xianggang shiyong zhongguo chuantong falü yu xiguan de ge’an yanjiu,” (“Individual case studies on the application of Chinese traditional law and

- custom in Hong Kong”) 3 *Zhongguo shehui kexue* (*Chinese Social Science*) 155-168.
- (2002) *Zhongfa xiyong: Zhongguo chuantong falü ji xiguan zai Xianggang* (*Western Application of Chinese Law: Chinese Traditional Laws and Customs in Hong Kong*) Beijing: Shehui kexue wenxian chubanshe.
- Summers, Anne (1999) “‘The Constitution Violated’: The Female Body and the Female Subject in the Campaigns of Josephine Butler,” 48 *History Workshop J.* 1-15.
- Swanson, Maynard W. (1977) “The Sanitary Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony, 1900-1909,” 18 *J. of African History*, 387-410.
- Szreter, Simon (1991a) “Introduction: The GRO and the Historians,” 4 *Social History of Medicine*, 401-414.
- (1991b) “The GRO and the Public Health Movement in Britain, 1837–1914,” 4 *Social History of Medicine*, 435-463.
- Tan, Carol G. S. (1993) “The Twilight of Chinese Customary Law Relating to Marriage in Malaysia,” in 42 *International and Comparative Law Quarterly*, 147-156.
- (1999) “Chinese Wills under the Laws of Hong Kong,” 29 *Hong Kong Law J.*, 93-122.
- (2006) “Courts and Laws in Weihaiwei: An Alien Legal System Mitigated,” 26 *Chinese Historical Researches*, 33-73.
- (2008) *British Rule in China: Law and Justice in Weihaiwei 1898-1930*, London: Wildy, Simmonds & Hill (Law in East Asia series).
- (2015) “How A ‘Lawless’ China Made Modern America: An Epic Told in Orientalism, a review of Teemu Ruskola, *Legal Orientalism: China, The United States and Modern Law* (Cambridge, MA: Harvard University Press, 2013),” in 128(6) *Harvard Law Review*, 1677-1704.
- Taylor, Veronica (1997) “Beyond Legal Orientalism,” in V. Taylor ed., *Asian Laws through Australian Eyes*, Sydney: LBC Information Services.
- The Committee of The Tung Wah Group of Hospitals (2010) *Hong Kong, Benevolent City: Tung Wah and the Growth of Chinese Communities*. Hong Kong: Hong Kong Museum of History.
- The Po Leung Kuk Committee (1969) *History of the Po Leung Kuk, Hong Kong, 1878-1968*. Hong Kong: Po Leung Kuk printer.
- Thomas, Nicolas (1994) *Colonialism's Culture, Anthropology, Travel and Government*, Cambridge: Polity Press.
- Ting, Joseph S.P. (1994) *City of Victoria: a selection of the Museum's historical photographs*, Hong Kong: Urban Council.
- Topley, Marjorie (1970) “Chinese Traditional Ideas and the Treatment of Disease: Two Examples from Hong Kong,” 3 *Man*, 421-37.
- (1976) “Chinese Traditional Etiology and Methods of Cure in Hong Kong,” in C. Leslie ed., *Asian Medical Systems: A Comparative Study*, Berkeley: University of California Press.
- (1978) “Chinese and Western Medicine in Hong Kong: Some Social and Cultural

- Determinants of Variation, Interaction and Change,” in A. Kleinman et al., ed., *Culture and Healing in Asian Societies, Anthropological, Psychiatric and Public Health Studies*, Cambridge, Massachusetts: Schenkman Publishing Company.
- Tsang, Steve Yui-Sang (2004) *A Modern History of Hong Kong*, London; New York : I.B. Tauris.
- Tseung, F. I. (1972) “Chinese Medicine and Its Contribution to Modern Medical Science”, 12 *J. of the Royal Asiatic Society Hong Kong Branch*, 12-19.
- Tsung-I, Jao (1959) *Kowloon with its historical materials in the late Song Dynasty*, Xianggang, Wan you tu shu gong si.
- Tung Wah Board of Directors, 1960-1961 (1961) *Development of the Tung Wah Hospital 1870-1960 (Tung Wah sanyuan fazhan shelue)*(bilingual), Hong Kong: the Tung Wah Group.
- Tung Wah Board of Directors (1971), *One Hundred Years of the Tung Wah Hospital 1870-1970 (Tung Wah sanyuan bainian shelue)* 2 volumes (bilingual), Hong Kong: the Tung Wah Group.
- Twining, William L. (2009) *General Jurisprudence: Understanding Law from a Global Perspective*, Cambridge, UK; New York: Cambridge University Press.
- Van der Sprenkel, Sybille (1962) *Legal institutions in Manchu China: A Sociological Analysis*, London: Athlone Press.
- Walker, Cranston (1911) “Upon the Inoculation of Materia Morbi through the Human Skin by Flea-bites,” 11 *The J. of Hygiene*, 290–300.
- Walkowitz, Judith (1980) *Prostitution and Victorian Society: Women, Class, and the State*, Cambridge: Cambridge University Press.
- Wang, Gungwu & Wong Siulun (1997) *Dynamic Hong Kong: Business & Culture*, Hong Kong: Centre of Asian Studies, University of Hong Kong.
- Wang, Huilin (2006) “Donghua: xianggang diyisuo zhongyiyuan,” (“Tung Wah: Hong Kong’s First Chinese Medicine Hospital,”) in R. Liu & H.Wang et al. *Yishan xingdao: donghua sanyuan 135 zhounian jinian zhuan ti wenji (Fostering Goodness Doing Rightness: Essay Collection celebrating 135 Anniversary of Tung Wah Three Hospitals)*. Xianggang: Sanlian shudian (Xianggang) youxian gongsi.
- Wang, Tai-sheng (2000) *Legal reform in Taiwan under Japanese colonial rule, 1895-1945: the reception of western law*, Seattle: University of Washington Press.
- Warner, John (1976) *Fragrant Harbour: Early Photographs of Hong Kong*, Hong Kong: J. Warner Publications.
- Warren, James F. (1990) “Prostitution and the Politics of Venereal Disease: Singapore, 1870-98,” 21 *J. of South East Asian Studies*, 360-83.
- Watson, Alan (1974) *Legal Transplants: an Approach to Comparative Law*, Edinburgh: Scottish Academic Press.
- (1977) *Society and Legal Change*, Edinburgh: Scottish Academic Press.
- (1985) *The Evolution of Law*, Oxford: Blackwell.

- (1993) *Legal Transplants: An Approach to Comparative Law*, Athens, Ga.; London : University of Georgia Press.
- Welsh, Frank (1993) *A History of Hong Kong*, London: HarperCollins.
- Werner, Menski (2006) *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, Cambridge: Cambridge University Press.
- Wesley-Smith, Peter (1982) “Some Legal Problems Relating to Land in the New Territories,” in A. Birch ed., *The New Territories and Its Future: Proceedings of a Symposium of the Royal Asiatic Society, Hong Kong Branch*, Hong Kong: the Royal Asiatic Society Hong Kong Branch.
- (1986) *The Reception of English Law in Hong Kong*, Hong Kong: Faculty of Law & Centre of Asian Studies, University of Hong Kong.
- (1987) *An Introduction to Hong Kong Legal System*, Hong Kong: Oxford University Press.
- (1988) “The Reception of English Law in Hong Kong”, 18 *Hong Kong Law J.* 183-217.
- (1994a) “Chinese Law and Custom as a Source of Law”, in *The Sources of Hong Kong Law*, Hong Kong: Hong Kong University Press.
- (1994b) “Anti-Chinese Legislation in Hong Kong”, in M. K. Chan ed., *Precarious Balance: Hong Kong between China and Britain 1842-1992*. ME Sharpe: Armonk, NY and London, England 91-105.
- (1995) “Usages, Good Customs and Good Government”, 25 *Hong Kong Law J.* 293-94.
- (1998) *Unequal Treaty 1898-1997: China, Great Britain, and Hong Kong's New Territories*, Hong Kong: Oxford University Press.
- Whitt, Laurelyn (2009) *Science, Colonialism and Indigenous Peoples: The Cultural Politics of Law and Knowledge*, Cambridge : Cambridge University Press.
- Wilson, John (1846) *Medical notes on China*, J. Churchill, London.
- Wing Sang, Law (2009) *Collaborative Colonial Power, the Making of Hong Kong Chinese*, Hong Kong: Hong Kong University Press.
- Winston, Kenneth (2005) “The Internal Morality of Chinese Legalism,” *Singapore J. of Legal Studies*, 313-347.
- Wong, Grace (2004) “Has SARS Infected the Property Market? Evidence from Hong Kong”, Princeton University, Department of Economics, Industrial Relations Section, Working papers no.11 (April).
- Wong, Kam C. (2008) “Chinese Jurisprudence and Hong Kong Law”, Presented in the ACJS 45th Annual Meeting on “American Justice: Rhetoric or Reality?”, Cincinnati, OH (12 March).
- Xie, Yongguang (1998) *Xianggang zhongyiyao shihua (History of Chinese medicine and Medicament in Hong Kong)*, Hong Kong: Joint Publishing (H.K.) Co., Ltd.
- Yang, Xiangyin (2007a) “Ying'er siwanglü yu jindai xianggang de ying'er jiankang fuwu (1903-1941nian)”, (Infant Mortality and Infant Health Services in Modern Hong Kong, 1903-1941) 1 *Zhongguo shehui lishi pinglun (Chinese Social History Review)*, 1-26.

——(2008) “Jindai xianggang yiliao, jibing yu weishengshi yanjiu,” (“Contemporary Research on Hong Kong’s Medication, Diseases and Public Health History”) 4 *Shixue lilun yanjiu (Historiography Quarterly)*, 116-123.

Yang, Ziyang ed.,(1984) *Xianggang de huigu (Looking back Hong Kong)*, Xianggang:

Yayuan chubanshe.

Yeoh Brenda S.A. (1996) *Contesting Space, Power Relations and the Urban Built Environment in Colonial Singapore*, Oxford Singapore New York, Oxford University Press.

Y. Fan (2011) “Goujian ‘xinmin’: Jingying shijiao xia de minguo jinbi yundong” (Making a New Nation: the Slave-girl Abolition of Republic China from Elite Perspective), 31 *Yunyang shifan gaodeng zhuanke xuexiao xuebao (Journal of Yunyang Teachers College)*, 78-82.

Yin, Robert K. (2003) *Case Study Research: Design and Methods*, Thousand Oaks, Calif.; London: Sage Publications.

Yip, Ka-chi ed. (2009) *Disease, Colonialism, and the State: Malaria in Modern East Asian History*, Hong Kong: Hong Kong University.

Yuen, Karen (2004) “Theorizing the Chinese: The Mui Tsai Controversy and Constructions of Transnational Chineseness in Hong Kong and British Malaya”, 2 *New Zealand Journal of Asian Studies* 6.

Unpublished theses

Cheung, Ngayan (2011) “Accounting for and Managing Risk in Sex Work: A Study of Female Sex Workers in Hong Kong”, Centre for Criminology & Sociology Royal Holloway College University of London, PhD Thesis.

Cowell, Christopher A. (2009) “Form follows Fever Malaria and the Making of Hong Kong, 1841-1848.” M. Phil. diss., Department of History, Hong Kong University.

George, Janet (1993b) “Moving with Chinese Opinion: Hong Kong's Maternity Service 1881-1941.” Ph.D. diss., Department of Social Work and Social Policy, University of Sydney.

Hao, Xianzhong (2005) “Jindai zhongyi cunfei zhizheng yanjiu” (On the Abolishment and Preservation of Modern Chinese Medicine), Ph.D. diss., Department of History, East China Normal University.

Law, Yuan-han (2003) “1842 nian zhi 1937nian jian zhengfu yiliao zhengce yu xiye tizhi zai xianggang de fazhan.” (“Western Medical System in Hong Kong, 1842-1937.”) M.Phil. diss., Department of History, Hong Kong Baptist University.

—— (2007) “Xifang yixue yu zhimin guanzhi: yi er’ci shiji dazhan qian xianggang he xinjiapo wei bijiao ge’an.” (“Western Medicine and Colonial Rule: Pre-WWII Hong Kong and Singapore as Comparative Cases.”) Ph. D. diss., Department of History, Hong Kong Baptist University.

Lei, Xianglin (1999) “When Chinese medicine encountered the state:1910-1949.” Ph.D. diss., the Committee on the Conceptual Foundations of Science, University of Chicago.

Petrie, Ian Christopher (1996) “The Problem of Infant Mortality in Hong Kong, 1886-1937.”

Master diss., Department of History, The University of British Columbia.

Ting, Joseph Sun-pao (1988) “Xianggang zaoqi zhi huaren shehui 1841-1870” (Chinese community in early colonial Hong Kong 1841-1870), PhD thesis, Department of History, Hong Kong University.

Wong, Wesley Wai-chung (1996) “Town Planning Enforcement through the Criminal Justice System in Hong Kong”. Master diss., Law Department, Hong Kong University.

Yang, Xiangyin (2007b) “Zhimin quanli yu yiliao kongjian: xianggang donghua sanyuan zhongxiyi fuwu bianqian (1894-1941)” (“Colonial Power and Medical Space: The Transformation of Chinese and Western Medical Services in the Tung Wah Group of Hospitals, 1894-1941”) Ph.D. diss., Department of History, Chinese University of Hong Kong.

Yuen, Kwok-keung (2003) “The Writing of Competing Histories of Hong Kong, with Special Reference to the Perspectives from Britain, Mainland China and Hong Kong” Ph.D. diss., Department of History, University of Waikato.

Zhang, Lili (2009) “Shijiu shiji yingguo gonggong weisheng lifa yanjiu” (A Study on British Public Health Legislation in the Nineteenth Century), Master diss., School of Law, Henan University.

Zhou, Hong (1992) “The Origins of Government Social Protection Policy in Hong Kong, 1842-1941”. Ph.D. disser., Waltham: Brandies University.